

The Honourable Roger North, 1651–1734

On Life, Morality, Law and Tradition

Jamie C. Kassler



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(1651–1734)



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JAMIE C. KASSLER

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ABBREVIATIONS

In abbreviations used for repositories, the country is given first and then the library, as follows:

Australia (A)

- Nk Library of Jamie and Michael Kassler, Northbridge, New South Wales
- Nla National Library of Australia, Canberra, Australian Capital Territory
- Vsl State Library of Victoria, Melbourne, Victoria

United Kingdom (UK)

- H Hereford Cathedral, Hereford
- Iro Ipswich Record Office, Ipswich
- Lbl British Library, London
- Ltna The National Archives (formerly Public Record Office), London
- Nr Private collection, Rougham, Norfolk
- Nro Norfolk Record Office, Norwich
- Ob Bodleian Library, Oxford

United States (US)

- Dlc Library of Congress, Washington, District of Columbia
- Lu University of Kansas Libraries, Lawrence, Kansas
- NHb Beinecke Library, Yale University, New Haven, Connecticut
- NYp Pierrepont Morgan Library, New York, New York
- SMh Huntington Library, San Marino, California

In the edition of North's manuscript included in Part II of this study, the original foliation is indicated in bold type at the appropriate places in the edition. For all references to the edition, I have used the foliation, not the pagination of this book. The manuscript described in Appendix A is cited as Appendix A followed by the relevant

foliation enclosed in round brackets, e.g., ‘Appendix A (f. 2)’. Two other manuscripts are cited in the notes by the abbreviations RN Books (1) and RN Books (2). For information about these two manuscripts, as well as about North’s unpublished writings, see *infra* References: Manuscripts.

Footnote citations to published works are given in an abbreviated form, using author’s last name and a shortened title; for the complete citations, see *infra* References: Published Works. Other abbreviations used refer to the *Oxford English Dictionary* (OED), as well as to (1) volumes in the *North Papers* series; (2) recent editions of Roger North’s biographical writings; and (3) frequently mentioned members of the North family. Abbreviations for the *North Papers* and for North’s biographical writings are given *infra* References: Published Works, whereas abbreviations for the North family are given below as follows:

DN (1) = Dudley North (*bap.* 1582–1666), third baron North (1600)

- Justice of the peace, author and amateur musician. He was educated at Cambridge, matriculating fellow-commoner from Trinity (c.1597) but taking no degree. He travelled in Europe, serving also in the Low Countries. After taking his seat in the House of Lords, he continued to serve in parliament even though by the mid-1620s he was nearly financially ruined. In 1642 he was named lord lieutenant of Cambridgeshire. After the regicide he left London for the family home at Kirtling, remaining there throughout the interregnum. For many years he suffered from depression, and during one of these bouts he discovered the mineral springs at Tunbridge Wells. For biographical details, see Randall, *Gentle Flame*, pp. 11–27; see also Beaurline, ‘Dudley North’s Criticism’.

DN (2) = Dudley North (1602–77), K.B. (1616), fourth baron North (1666)

- Father of nine children. He was an author, amateur musician, justice of the peace and a member of parliament for Cambridgeshire (1640–53). In 1646 and 1649 he was

appointed to commissions concerned with draining the Fens. On 24 April 1632 he married Anne (c.1613–81), a daughter by the second wife of Sir Charles Montagu, one of eight sons of Edward Montagu of Boughton, and a brother of Sir Henry Montagu, first earl of Manchester. Her probated will, dated 3 April 1681, names Roger North as her sole executor.¹ For a modern biography, see Randall, *Gentle Flame*.

FN = Francis North (1637–85), kt. (1671), first baron Guilford (1683)

- Second son of **DN** (2). He was educated privately, at the free grammar school at Bury St. Edmunds,² and at St. John's College, Cambridge, where he was admitted as a fellow commoner on 8 June 1653. Two years later, on 27 November 1655, he was admitted to the Middle Temple, London, where he was called to the bar (1661) and, upon becoming king's-counsel, to the bench (1668). Subsequently, he was solicitor-general (1671), attorney-general (1673), chief justice of the Common Pleas (1675) and member of the reorganised Privy Council (1679), lord keeper of the Great Seal to Charles II (1682) and to James II (1685).³ On 5 March 1672 he married Frances, daughter and co-heiress of Thomas Pope, third earl of Downe. After his marriage, he took lodgings in Portugal Row, Lincoln's Inn Fields, and then moved to a large house in Chancery Lane next to Serjeant's Inn. When his wife became ill, he also leased a country house at Hammersmith. In 1678 his mother-in-law died, and his wife and her two sisters inherited Wroxton Abbey near Banbury, Oxford; but he purchased the shares of his sisters-in-law, so that the estate passed to him and his descendants. On 15 November of the same year, his wife died, leaving three

¹ (UK:Ltna) Prob/11/366.

² I.e., King Edward VI Free Grammar School.

³ FN was never lord chancellor, as sometimes is claimed. Nevertheless, 'though of slightly lower status, a lord keeper had legally the same authority as a chancellor'; see Baker, *An Introduction*, pp. 99–100.

children. Not long afterwards the politics of faction and corrupt practices began to destroy his health, bringing about his early death at the age of forty-eight. His probated will, dated 30 September 1685, names his brothers Dudley, Montagu and Roger as guardians and educators of his children and as executors of the estate.⁴

DN (3) = Dudley North (1641–91), kt. (1683)

- Third son of **DN (2)**. He was educated at the free school at Bury St. Edmunds and then at a writing school in London, where he studied penmanship and accounting. In 1657 he was apprenticed to a Levant merchant in London, spending the latter part of his apprenticeship in Smyrna (1661); but he visited London briefly before returning to Smyrna as a full-fledged member of the Levant Company (1662). Subsequently, he became a partner in a Constantinople trading house, and a few years later opened his own firm. By the age of thirty he was the most substantial of the English merchants and had acquired a command of Turkish and the dialects in use in the Levant. He returned permanently to England about 1680, when he resided briefly with his brother Francis and then with a merchant's widow. In May 1682 he leased the house of Sir William Hedges in Basing Hall Street, an area surrounded by smithies; and it was here and in a laboratory in Hawk's Mews that he and Roger North conducted experiments. On 12 April 1683 he married Ann, a childless widow of Sir Robert Gunning (Goning, Gonning) and a daughter of Sir Robert Cann. The couple then settled at Camden House in Maiden Lane. Of four children, three survived but two died young, leaving the eldest son and namesake, who in 1706 married the daughter of Elihu Yale and in 1708 acquired the estate of Little Glemham. Sir Dudley's probated will, dated 13 February 1692, names his

⁴ (UK:Ltna) Prob/11/380 (will) and Prob/11/381 (sentence dated 2 December 1685).

brothers Montagu and Roger as executors.⁵ For a modern biography, see Grassby, *The English Gentleman in Trade*.

JN = John North (1645–83), D.D. (date unrecorded)

- Fourth son of **DN (2)**. He was educated at the free school in Bury St. Edmunds and at Jesus College, Cambridge, where he was admitted as a fellow commoner (1661), made a fellow by Royal mandate (1664), graduated B.A. (1664) and M.A. (1666). After his ordination as deacon (Ely 1669) and priest (1670), he became professor of Greek in the University, at which time he migrated from Jesus College to Trinity College (1672). He resigned his professorship when he became clerk of the closet to Charles II (1674). He also was a prebendary of Westminster (1673), chaplain to the king (1676) and master of Trinity College (1677). In 1680 he suffered a stroke, lingering on in a disordered state until his death. His probated will, dated 27 April 1683, names his brother Francis as sole executor.⁶

MN (1) = Montagu [Mountague] North (1649–1710)

- Fifth son of **DN (2)** and the brother closest in age to Roger North. In 1660 the two boys were taught how to play the viol by John Jenkins, and in 1663 they were sent to the free school at Thetford. Montagu then followed in the footsteps of his brother Dudley, becoming a partner in the Levant, where he remained until 1686. On his return to England to take his freedom of the Levant Company, he resided with that brother. From 1687 he served as assistant and auditor of the Russia Company before leaving for Constantinople in 1689. En route he was taken prisoner by the French at Toulon. Upon his release in October 1693, he returned to England and between 1694 and c.1696 resided with Roger North at Rougham, Norfolk. Plagued by chronic health problems, he fell ill at

⁵ (UK:Ltna) Prob/11/409.

⁶ (UK:Ltna) Prob/11/372; see also Prob/11/374 (sentence dated 6 July 1683).

Little Glemham in 1709 and died there on 27 September 1710. His probated will, dated 6 April 1711, names Roger North as sole executor and residuary legatee.⁷

MN (2) = Montagu [Mountagu] North (1712–79), D.D. (1767)

- Second son of Roger North. Little is known about his early years until his removal in 1728 or earlier to Mr. Russell's House, College Street, Westminster, London, where he also studied the theory of music with John Christopher Pepusch.⁸ On 26 June 1730 he was admitted as a pensioner at Jesus College Cambridge, occupying a chamber previously held by his father and uncle John.⁹ Elected scholar (1730) and proceeding B.A. (1734) and M.A. (1737), he was ordained deacon (Ely 1738) and priest (Norwich 1738). Latterly, he was rector of Sternfield (1767) and prebendary of Windsor (1775). He married Elizabeth, daughter of the Rev. Francis Folkard, rector of Clapton. After a long illness, she predeceased her husband. There was no issue. His probated will is dated 2 November 1779.¹⁰

RN = Roger North (1651–1734)

- Sixth son of **DN (2)** and the subject of this study. His portrait, painted by Peter Lely in 1680,¹¹ remains in the possession of the descendants.¹² Copies in the form of engravings were made to accompany editions of North's writings, one in 1740 by George Vertue, a second in 1824 by Wainwright (probably

⁷ (UK:Ltna) Prob/11/520.

⁸ (UK:Nr) MS Letter-book.

⁹ Letter to MN (2), 16 November 1730 (original untraced), RN, 'Letters', p. 270.

¹⁰ (UK:Ltna) Prob/11/1058.

¹¹ The portrait is illustrated in Miller, *Sir Peter Lely*, no. 59 and pp. 71–2.

¹² I.e., at (UK:Nr). According to instructions in RN's will, his second daughter Mary and her husband, Henry Le Strange ('Lestrange'), were to have 'the possession and use' of it, but after the death of Mary the portrait would return to the family 'as an heir loom'. See (UK:Ltna) Prob/11/667 (dated 19 October 1734).

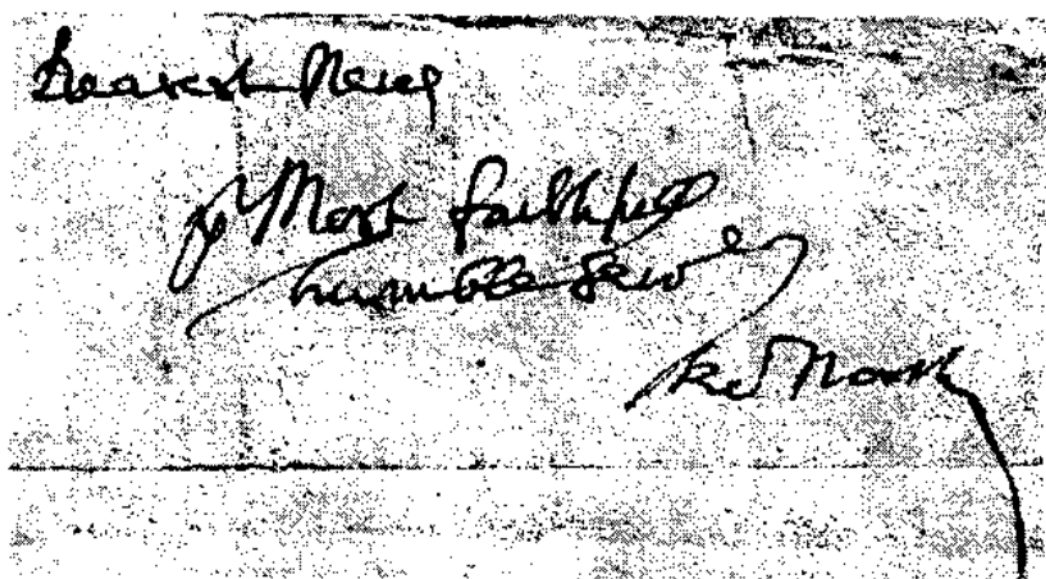
T. G. Wainwright) and a third in 1826 by R. Cooper (possibly Richard Cooper, the younger).¹³ In 1887 the National Portrait Gallery in London purchased an oil on canvas copy of the original portrait ‘after Lely’. Although North formed a large library, the whole of it cannot now be reconstructed.¹⁴ Some portions can be gleaned from the two booklists that survive,¹⁵ as well as from citations in many of his writings.¹⁶ North’s name also appears in subscription lists of seven books published between 1714 and 1721. But confusion is possible for the later years, because his eldest son was also named Roger. However, in the case of ownership inscriptions in books, the signatures of the two men are quite distinctive, as *Figure 1(a) and (b)* indicates. Finally, some of North’s books might be identified from his bookplate, which has the North coat of arms (three fleur-de-lis and rampant lion) and crest (a dragon’s head ducally gorged and chained). Although when he passed on a book to someone else, he seems to have scrubbed out part of his name, as shown in *Figure 2*.

¹³ For the editions, see *infra* Appendix C: NORTH 1740, which also includes details about the edition of 1826, and NORTH 1824.

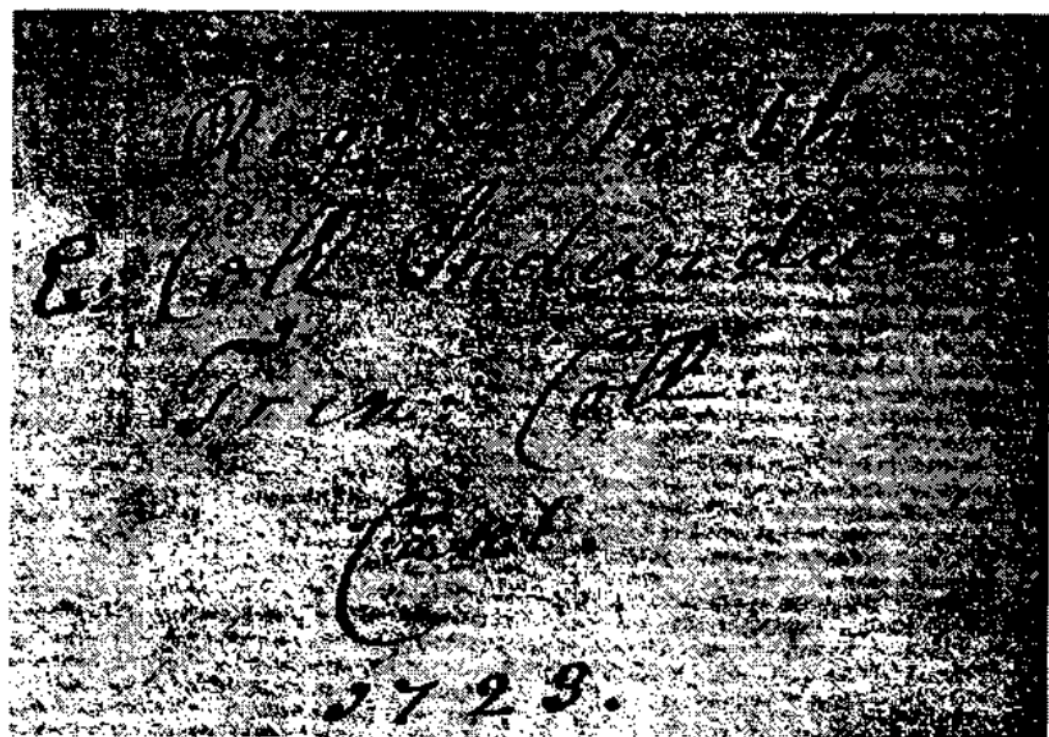
¹⁴ At his death he bequeathed to his son MN (2) ‘a tenth part of my Rougham Library folios and others such as shall be esteemed most fitt for the profession of General Scholarship in the way of a Devine’; see RN’s probated will (UK:Ltna) Prob 11/667. The rest of the library seems to have remained in Rougham Hall, although about 1712 some of its contents were transferred to the parish church; see *infra* References: Manuscripts. For the dispersal of the books in both the Hall and the church, see North, *Recollections of a Happy Life*, vol. 1, p. 2. The library of MN (2), as well as the books of some other collectors, was offered for sale by Thomas Payne and Son on January 1781 and following days (UK:Lbl) S.C.521(1).

¹⁵ See RN Books (1) and (2) described *infra* References: Manuscripts.

¹⁶ See, e.g., NP 2, 3, 5, 6; see also the incomplete checklist in Korsten, ‘Roger North’.



(a)



(b)

*Signatures of (a) Roger North
and (b) his eldest son and namesake (A:Nk)*
Figure 1



Armorial bookplate of Roger North (A:Nk)
Figure 2

ACKNOWLEDGMENTS

In 2005, during a short trip to London, I transcribed the manuscript that is edited in this book but lacked sufficient time to check my transcription against the original so as to ensure accuracy. To my great surprise, this problem was solved by the generosity of Graham Pont, whose gift of a CD-Rom of the manuscript, purchased from the British Library, facilitated my task as editor. Special thanks are due also to John Gascoigne, who read and commented on a rough draft of the first part of this study; Wilfrid Prest, who answered various queries relating to legal history; Julia Anstey, who unravelled the meaning of three problematic Latin phrases; and John Lee, who deciphered an almost indecipherable Greek phrase in one of North's manuscripts. Last, but not least, is my husband, Michael Kassler, who, although busy with his own studies and projects, has unfailingly come to my aid in ways too numerous to list.

When a study of the Honourable Roger North was first commissioned, it was planned as an extended treatment of his philosophy of music. But the plan began to change after reading J. B. Schneewind's *The Invention of Autonomy*, a ground-breaking work on the history of moral philosophy. I am therefore fortunate in my editor, the ever gracious Rachel Lynch, who understands how voyages of discovery can change tack and move in new directions. I have benefited also from the assistance of Ken Moxham, who proof-read my text, and Kirsten Weissenberg, who lead the book through the production process. The image in Figure 4 from Henry Rolle, *Un abridgment des plusieurs cases et resolutions del common ley....* (London, 1668), [part i], p. 60, is reproduced by permission of the National Library of Australia from the copy in their possession, RBf CLI 4139.

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Northbridge, N.S.W., Australia
February 2009



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INTRODUCTION

In 1686 Roger North removed from his chambers in the Middle Temple to a house in Covent Garden, where he began to lay the foundations for his work as a writer not only on law, his profession, but also on many different subjects, an activity that he continued until nearly the time of his death in 1734. Only a few of these writings were published during his lifetime, all without his name, so that his authorship remained mostly unknown until the twentieth century.¹ Shortly before his death he wrote to his second son Montagu, then at Cambridge University, that his writing was failing, that whereas his son ‘may exercise with pleasure the *copia* of expression and order, as well form of writing,’² always advancing for the better, ... I must droop in everything, always tending to the worse’. Nevertheless, North instructed his son to have ‘a strict care of the MSS., which I would not have miscarry in any respect, being a sort of writing slight and slovenly as it is (such a fool I am) [that] pleaseth me to peruse better than any books, of which the best soon tire with me’.³

Those manuscripts, by a codicil to North’s will, became the property of Montagu North,⁴ who subsequently edited five for publication.⁵ The first was an edition of North’s *Examen*, a polemical work published in 1740. Then followed editions of North’s lives of three of his brothers—Francis North, published in 1742, and Dudley

¹ See *infra* Appendix B.

² I.e., plentiful supply of words (*copia*) and their orderly construction (‘framing’)—elements of style or manner of expression that constitute a literary form.

³ RN to MN (2), 2 June 1733, RN, ‘Letters’, pp. 278–9.

⁴ There are two codicils, the second of which, dated 14 October 1733, contains the bequest of RN’s ‘Papers’ as well as his ‘Music Books’; see (UK:Ltna) Prob 11/667.

⁵ See *infra* Appendix C.

and John North, published in 1744. Finally, an edition of North's tract on the statutes relating to the poor was published in 1753. In the nineteenth century under the successive superintendence of Henry Roscoe, Edward Rimbault and Augustus Jessopp, three more writings of North were published: on the study of law (1824), on the history of music (1846) and on himself (1887, re-issued 1890). In addition, the biographical writings edited by Montagu North were re-issued unchanged—the life of Francis North in 1808 and 1819 and all three lives in 1826 and 1890, the latter two with added commentary by the nineteenth-century 'editors'.

As this brief account of the publishing history makes clear, North became publicly known as writer between 1740 and 1890. But the extent of his writings was not widely known, because few of the works published anonymously during his lifetime had been identified as his and because his manuscripts remained in private hands during most of the period when he came to public attention as a writer. From 1734 the manuscripts were in the possession of Montagu, who, on 26 June 1730, had begun his studies at Jesus College, Cambridge. Here, he allowed a few persons to peruse, and even to make copies of some of the manuscripts. From documentary evidence it is certain that copies of some manuscripts were made by the Cambridge antiquarian Thomas Baker⁶ and the Norfolk-born music historian Charles Burney.⁷ And from circumstantial evidence it is probable that Laurence Sterne had access to the manuscripts, since he entered Jesus College as a sizar in 1733, receiving the Bachelor of Arts in 1737 and returning in the summer of 1740 for the Master of Arts degree.⁸

⁶ Thomas Baker was a fellow of St. John's College, Cambridge (1680), but in 1717 he resigned his fellowship owing to non-compliance with the abjuration oath, continuing to reside in college as commoner master until his death. For some of the uses Baker made of RN's manuscripts, see Chan in RN, *Life/FN*, pp. xxix–xxxi.

⁷ For Burney, see *infra* Appendix C: NORTH 1846.

⁸ In addition to being fellow students at Jesus, both Sterne and MN (2) had musical interests. For MN (2), see *supra* Abbreviations; see also RN, 'Letters', pp. 267–8, 271. For Sterne, see Curtis (ed.), *Letters of Laurence Sterne*.

After the death of Montagu North in 1779, his nephew and executor, Edward Roger North,⁹ took possession of a portion of the manuscripts.¹⁰ About 1833 the executor's daughter sold some to a broker;¹¹ and in 1838 the remainder were included in a sale of Edward Roger North's property shortly after the death of his only son Henry North of Ringstead.¹² After the dispersal of the manuscripts, three—on music, the barometer and architecture—were purchased by Robert Nelson of Lynn, Norfolk;¹³ and a large lot passed into the hands of the collectors Dawson Turner and James Crossley, the latter eventually acquiring most of those owned by the former.¹⁴ In 1885 the British Museum (now the British Library)

⁹ I.e., grandson of RN and second son of Roger North by his second wife. He was admitted aged seventeen as pensioner, Trinity College, Cambridge (1771); scholar (1773), B.A. (1775), M.A. (1778); ordained deacon (1776 Norwich) and priest (1777 London); curate of Gressenhall, Norfolk (1776–77) and vicar of Harlow, Essex (1777–89).

¹⁰ MN (2) made no specification in his will about the manuscripts; but Millard, 'The Chronology of Roger North's main Works', p. 285, conjectured that they were among the 'Residue and overplus' of the estate left to Edward Roger North; see (UK:Ltna) PROB/11/1058.

¹¹ The antiquary and thief William Stevenson Fitch claimed to have purchased a large group of RN's manuscripts from a broker's shop near the North family home in Rougham; and other manuscripts were purchased by the bookseller Thomas Rodd. For details, see Freeman, *The Postmaster of Ipswich*, pp. 115–16, and Munby, *Phillipps Studies I–V*, no. 3, p. 47. See also the informative note by James Crossley, dated 1877, at f. 1 in RN, 'Notes of Me' (UK:Lbl) Add MS 32506: ff. 1–194, indicating that he had purchased that manuscript from Rodd.

¹² Henry North was admitted aged nineteen as pensioner at Caius, Cambridge; B.A. (1810), M.A. (1813); ordained deacon (1810 Norwich) and priest (1811); vicar of Heacham, Norfolk (1812–37) and rector of Great Ringstead (1811–37). He died unmarried, whence the sale of the property of his father Edward Roger North on 6 February 1838 (UK:Lbl) S.-C.S. 217 (3), of which lot 600 contains a collection of manuscripts and letters by, or relating to RN.

¹³ For Nelson, see *infra* Appendix C: NORTH 1846.

¹⁴ Regarding the purchases of Dawson Turner and James Crossley, see Freeman, *The Postmaster of Ipswich*, pp. 87, 115–17; see also Millard, 'The Chronology of Roger North's main Works', pp. 285–6, and Millard in RN, *Notes of Me*, pp. 60–61. It is possible either that some manuscripts were part of the 1853, 1859 and 1869 sales of Turner's library or that Turner himself gave some manuscripts to

purchased many, but not all of North's manuscripts from the collection of Crossley.¹⁵ On 23 June 1947 the ten-volume manuscript of the sixth and final version of the life of Francis North was sold at Sotheby's and purchased by the librarian of St. John's College, Cambridge.¹⁶

From 1885, then, a large number of North's manuscripts became more widely accessible. But they attracted little notice; and it was not until the 1970s that systematic scrutiny was increasingly applied to the editorial methods in which North's texts had been transmitted by publication—methods, as we now know, that were unsystematic and that, in some cases, drastically altered, even bowdlerised North's original text. Credit for drawing attention to this problem is due particularly to the late Peter Millard, who was the first to re-edit one of the previously edited texts according to more rigorous editorial practices.¹⁷ Before then, few critics of North's writings were concerned with the manuscript originals or with the editorial practices represented in the published works. What, then, were their concerns? A brief answer to this question may be given by recourse to one type of critic—the so-called 'Whig' critic—for this type of critic has had undue influence on the reception of North's writings and his reputation as a writer, about which I shall have more to say later on.

Initially, the epithet 'Whig' described a critic—historian, essayist, editor—who held the political opinions or principles of one

his son-in-law Francis Palgrave, for the latter once owned the holograph of FN's commonplace-book of 'Coke upon Littleton' (US:Dlc) KD 833.G85/1685, i.e., the first part of Coke's *Institutes of the Laws of England* regarding which see *infra* RN, 'Of Etymology', note to f. 89v.

¹⁵ There were three sales of Crossley's library: the first in Manchester in 1884; then two further sales in London by Sotheby, Wilkinson and Hodge in 1884 and in 1885 (UK:Lbl) [Part I] S-CP 877, 1056 (4) and [Part II] 890. According to Colvin and Newman in RN, *Of Building*, p. xxiii, a descendant of RN, Marianne North, bought lot 3055 at Part II of the Sotheby sale, 11–20 June 1885.

¹⁶ For some history of this manuscript, see further *infra* Appendix C: NORTH 1742 and 1744.

¹⁷ See Millard in RN, *Life/JN*, pp. 3–4, 38–9, 41; see also *infra* Appendix C: NORTH 1742 and 1744.

of the two parliamentary and political parties in England that emerged during the latter part of the seventeenth century. But later, the epithet was extended to refer not merely to a political ideology but also to a method described by C. B. Wilde as that which devotes attention chiefly to

...seemingly modern ideas and movements regardless of their importance in their own time, refusing historical understanding to all opposing tendencies. The conservative thinker, the Tory or the Catholic, is often dismissed as dogmatic, bigoted or superstitious. Ideas of paramount importance in their own time, but alien to the Whig historian, may even fail to find room in his account. Thus the Whig historian makes the present the absolute judge of past controversies and the sole criterion for the selection of episodes of historical importance.¹⁸

Two examples of Whig criticism published in the nineteenth century will indicate the approach described by Wilde.

The first example is found in the *Lives of the Lord Chancellors and Keepers of the Great Seal of England* by John Campbell, whose aim was to represent Francis North as ‘one of the most contemptible men who ever held the Great Seal of England’.¹⁹ To achieve this aim, Campbell plundered large sections of Roger North’s life of that brother, using one of the re-issues of Montagu North’s edition. But he construed what he plundered in such a way as to depict the subject of the biography not only as ‘selfish, cunning, sneaking, and unprincipled’ but also as an extremist—as ‘a zealous royalist and high churchman’ and as ‘an ultra-prerogative lawyer, exalting the power of the King both over the church and the parliament’, who ‘continued to act a very conspicuous and disreputable part down to the time of his death’.²⁰ While relying on numerous and long

¹⁸ Wilde, ‘Whig History’, p. 445; see also Birrell, ‘Roger North and Political Morality’, p. 282.

¹⁹ Campbell, *Lives*, vol. 4, pp. 280–337, p. 280.

²⁰ For a balanced account of FN, see Holdsworth, *A History of English Law*, vol. 6, pp. 205–6.

quotations from Roger North's text, Campbell, in a number of asides, also demeaned him as a writer by chastising his 'inaccuracies' and 'want of method'. At the same time, he damned the biography with faint praise by acknowledging his 'obligations to "Roger North's Life of the Lord Keeper;" which, like "Boswell's Life of Johnson," interests us highly, without giving us a very exalted notion of the author'.²¹

Thomas Babington Macaulay, is more widely known as a critic whose works were largely coloured with Whig political sympathies. And in the first volume of his *History of England*, he, too, made frequent use of North's lives of his brothers, as well as his *Examen*, citing these works in footnotes rather than in quotations within the text. Like Campbell, however, he applied the Whig bias when construing the moral character of Francis North as base, sordid and dishonourable and his faults as 'selfishness, cowardice, and meanness'. But Macaulay was even more critical than Campbell in his depiction of Roger North as

...a most intolerant Tory, a most affected and pedantic writer, but a vigilant observer of all those minute circumstances which throw light on the dispositions of men. It is remarkable that the biographer, though he was under the influence of the strongest fraternal partiality, and though he was evidently anxious to produce a flattering likeness, was unable to portray the Lord Keeper [Francis North] otherwise than as the most ignoble of mankind.²²

In this passage, and in the quotations from Campbell above, the two Whig critics accused Roger North of misrepresentation, at the same time that they themselves proceeded with little, if any, concern for the norms of factual accuracy (truth) and fairness (impartiality). It is worth pointing out, therefore, that W. S. Holdsworth, in his monumental study of the English law, not only frequently relied on North as an historical source, but also quoted him on the title-pages

²¹ Campbell, *Lives*, vol. 4, pp. 287, 290 and 337, who described RN as 'simple'.

²² Macaulay, *The History of England*, vol. 1, pp. 284–5.

of his multi-volume work. And about North's life of Francis, he had this to say: 'there is a good deal more truth in the picture which his brother [Roger North] has drawn, than in the pictures drawn by his [Francis North's] political opponents in the seventeenth and in the nineteenth centuries'.²³

Recalling Wilde's description of the method of Whig criticism, quoted previously, it is possible to explain why this type of criticism, aligned North with 'yesterday's men', not with the 'progress party'. This alignment, which may be found even in recent years, contributed to the reputation of North as a 'pompous, moralistic ... hidebound Tory',²⁴ and not only 'a rabid Tory'²⁵ but also a 'bigoted-Royalist, Anglican ... anti-Puritan',²⁶ a 'theological stickler' (that is, an orthodox or 'high' Anglican), as well as an 'anti-Newtonian',²⁷ whose writings are 'both a philosophical and a political failure'.²⁸ As these statements suggest, Whig criticism is dogmatic, for it relies on stereotypes by creating *a priori* caricatures of North and by treating his deeds or writings as a reflection of the caricatures.²⁹ As a consequence, this type of criticism has failed to establish a sound basis for interpreting North and his writings.

Of course, any investigation into the reception of North's writings would have to include other types of criticism. And it would need to determine, for example, whether critics examined the ways in which North staked out the frontiers of knowledge in his time and

²³ Holdsworth, *A History of English Law*, vol. 6, p. 531; see also *ibid.*, vol. 15, pp. 416–17, for a fair assessment of Campbell and Macaulay as critics whose practice was marred by intellectual self-conceit and a tendency to hold grudges.

²⁴ Delany, *British Autobiography*, p. 150.

²⁵ Ashcroft, 'Revolutionary Politics', p. 478 n.29.

²⁶ Scholes, *The Puritans and Music*, p. 180.

²⁷ Rogers, 'One of the Remarkables', p. 1196.

²⁸ Stewart, 'Samuel Clarke, Newtonianism, and the Factions', p. 65.

²⁹ In his revisionist biography, Keeton, *Lord Chancellor Jeffreys*, also plundered RN's writings. When they suited his own purpose, he was matter of fact; but when they did not, he resorted to using unflattering epithets regarding RN's supposed bias or maliciousness (see, e.g., pp. 115, 203, 207, 238, 377, 380, 486, 488–9, 502).

social formation, how he pioneered new literary forms or how he exploited resources available to him as a writer. Indeed, even today, there is little appreciation of his use of masks (*personæ*) and improvisation; his insertion of autobiographical remarks and even fictional devices into writings on non-biographical or non-fictional topics; his attempts to present himself and other characters in terms of their tone and manner of expression; and his irony, which includes mock value judgments signalled by the epithet 'good' before the names of certain kings.³⁰ And still to be discovered are the models on which North formed some of his techniques as a writer, although his writings contain covert hints, as well as overt acknowledgments. But, as James Clifford was among the first to point out, 'any valid re-estimate [of North as a writer] can come only after a thorough study of *all* his surviving manuscripts, and that is a task which will require the labors of many devoted scholars'.³¹

Clifford was alluding to the fact that a considerable number of North's manuscripts have survived the vicissitudes of time—on a rough tally about 30,000 leaves in the British Library alone. But it is the state of the manuscripts that presents one of the main challenges to 'devoted scholars'. For some manuscripts are drafts for an intended work or for a work that has been preserved in a more polished state;³² others are revisions of a work that had already been brought to completion.³³ Some are copies of writings produced at the behest of others;³⁴ others are fragments, including discards from a particular piece or pieces of writing.³⁵ With the exception of North's writings on music, few of his other manuscripts have been systematically studied for their inter-relationships, physical features, composition and dating, citations to other works and cross-references

³⁰ See, e.g., *infra* RN, 'Of Etymology', ff. 10v, 109v; see also Knox, *The Word Irony*, pp. 76–8.

³¹ Clifford, 'Roger North and the Art of Biography', p. 285 (italics mine).

³² See, e.g., NP 3, pp. 2–25, 48–62.

³³ See, e.g., NP 5, pp. 1–7, 49–59.

³⁴ See, e.g., NP 6, pp. 57–69.

³⁵ For discards, see, e.g., NP 3, pp. 26–32.

to North's own writings.³⁶ Moreover, only minimal attention has been paid to the techniques North used in procreation or the reasons why he wrote this or that manuscript.

Instead, from about the 1950s publications relating to North's work have been specialised studies, sometimes as introductions to an edition, that focus on his separate attainments as a writer of biography and autobiography, accountancy, economics ('trade'), architecture and music. To date, only one critic, Francis Korsten, has produced a more general account that includes an outline of North's life, assessments of a number of his writings, transcriptions of some previously unpublished writings³⁷ and a calendar of correspondence to and from North.³⁸ Though a pioneering attempt at the time, Korsten's account has serious deficiencies, due in part to his failure to address the problem of North's purposes and practices in writing. Added to this is an implicit Whig interpretation, with the consequence that Korsten represented North as an antiquated thinker and as a writer of little interest.³⁹

The following brief study, which eschews stereotypes, offers a different interpretation of a common lawyer who lived at a time

...when the last survivals of the institutions of the mediæval common law were giving place to the institutions of our modern law. He can therefore tell us much of the process of transition as he had heard of it or seen it. His political standpoint, and his historical bent, made him able to

³⁶ For a study of the paper of some of RN's manuscripts, see *NP* 4; for the methods used to systematise RN's manuscripts on music, see the introductions to *NP* 2, 3, 5, 6.

³⁷ Regarding these problematic transcriptions, see *infra* References: Manuscripts.

³⁸ For the correspondence, see Korsten, *Roger North*, pp. 232–52, which is the first such list and, hence, a useful starting point. But it is incomplete, for Korsten did not include letters in any U.S. library, and he omitted some in the British Library, apparently because they were not so catalogued; see, e.g., the letters to 'Sir' in (UK:Lbl) Add MS 32524 and the epistolary introduction to (UK:Lbl) Add MS 32531: ff. 1–41v, which is edited in *NP* 6, pp. 63–9.

³⁹ See, e.g., Korsten, *Roger North*, p. 97, according to whom RN's 'style shows how much he lived in the past and in isolation from the currents of the new times'.

sympathize with the old institutions, and to estimate the strong and the weak points of the new developments. Thus his books enable us to pick up a good deal of the detail of the process of change, which it would be difficult to recover from any other source.⁴⁰

But change in the institutions of law was symptomatic of a much wider transformation, not only intellectual but also social.⁴¹ And central to this change was a gradual fading of a transcendent realm as the ground for things in favour of an emphasis on positive facts and observable phenomena.

As will become apparent, North advises amending cautiously the existing institutions of law and opposes doctrinaire change, such, for example, as that advocated by the new philosophies that tended 'to deny the common law any independent role in constitutional or political theorising'.⁴² As a consequence, the tone of his reflections is occasionally melancholic, though not consistently dark. For, as I have elsewhere indicated, North's irony or 'drye mock' is that of one who, standing aside from events, writes with moderation occasionally embellished by exaggeration, as he tries to cast a critical beam of light on his responses to experience.⁴³ However, his critical reflections will be misunderstood without access to the main principles of North's philosophy. I say main principles, because North did not produce a systematic exposition of his philosophy (at least, none survives). Indeed, in many of his writings, he not only seems to avoid systematic thinking but also to embrace a kind of Ciceronian eclecticism, so that to discover evidence of a consistent pattern in his thought, it is necessary to consult a wide range of his writings, fragmentary as well as complete, and even those in which one might least suspect to find a philosophy.

Because of the unsystematised state of most of his manuscripts, my aim in this study is limited to the practical part of his philosophy,

⁴⁰ Holdsworth, *A History of English Law*, vol. 6, pp. 621–2.

⁴¹ For social changes, see Wilson, *England's Apprenticeship*.

⁴² Prest, 'The English Bar', p. 80.

⁴³ Kassler, 'Roger North', p. 53.

especially as it relates to ‘life’, morality, law and tradition, although I have used other parts of his philosophy as additional evidence for the pattern of thought elucidated here.⁴⁴ Since North’s critical reflections result from an engagement with problems encountered during the course of living, it is necessary, first, to introduce the reader to the man himself. Chapter 1 provides this introduction by outlining events in North’s life, by canvassing reasons for his retirement from public life and by analysing some of his purposes and practices as a writer.

Chapter 1 thus prepares the ground for Chapter 2, which examines North’s thoughts on the problem, how to live, beginning with his autobiography, where he represents himself as a Christian sceptic, who seeks to discover from his own experience how to live without the guidance of external rules. That this representation is truthful and not a mask is supported by evidence from a number of his other writings not only on a range of different subjects but also from different periods of writing. Some of these additional writings contain practical advice about how to live as a sceptic, advice which includes evaluating the options by a method of probabilistic reasoning, as well as adhering to law and tradition conceived as a developing yet constant expression of natural justice and equity that operates through the ‘forms’ of the common law.⁴⁵

Of North’s several writings on or including the subject of law, only one manuscript contains an exposition of his jurisprudence, an exposition that concludes with a brief sketch of the pre-history of the common law. But that exposition and sketch are parts of a larger series of critical reflections, in which North argues that custom rules existing usage in language and, hence, in law, because language—the instrument of thought—is the substance of the law, as well as the vehicle of its tradition. Chapter 3 presents an analysis of North’s

⁴⁴ E.g., RN’s writings on the philosophy of music, which include a natural philosophy (physico-mechanics), as well as a philosophy of perceptual cognition; see Kassler, *Inner Music*, pp. 160–207; Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 104–20; and Kassler, ‘Roger North’.

⁴⁵ For the forms of action, i.e., writs of various classes, see Baker, *An Introduction*, pp. 53–69. As distinct procedures, they were abolished in 1832 and 1833, when ‘the categories of common-law thought were in a way closed’.

argument, which also includes a set of objections regarding the dogmata of Thomas Hobbes concerning the language of English politics.

Scepticism, of course, can be used either for conservative or for subversive purposes. But since North's scepticism seems to have been voiced in his private, unpublished writings, neither the one nor the other purpose would seem to suffice as an explanation for his stance. Instead, from evidence adduced in Chapters 2 and 3, it would be possible to explain his scepticism, *at least in part*, as a response to the dogmatism of natural-law jurisprudence not only in its medieval, intellectualist version but also (perhaps especially) in its voluntarist reformulation, a reformulation that began with Hugo Grotius and that was subsequently developed by Hobbes, Samuel Pufendorf and John Locke. But because Grotius refused to call on the intellectualists' God who keeps the universe in moral order or the voluntarists' God who creates morality by fiat, the 'nature of obligation and of God's involvement in morality posed unavoidable questions' not only for later Grotians but also for Christian sceptics such as North himself.⁴⁶

The interpretation of North's practical philosophy presented here is based on finding what is consistent in his pattern of thought. But it also is the result of investigations over a period of some three decades into North's unpublished writings, during which my principal concern was to elucidate his contributions to the philosophy, practice and history of music. Nevertheless, the subject matter of this study is not unrelated to that previous concern—indeed, it is a natural progression from it—as the following three points will suggest. In the first place, there is a long tradition, going back to the ancient Greeks, in which music is credited with the double power of expressing and also of influencing moral character. And, as Warren D. Anderson has pointed out, it is this double power which constitutes the essential meaning of the Greek term *êthos*.⁴⁷ As mediated by Horace's formula, *utile dulci*, that ancient tradition appears in North's reflections on music's moral purpose—to please

⁴⁶ See Schneewind, *The Invention of Autonomy*, pp. 73, 75.

⁴⁷ Anderson, *Ethos and Education in Greek Music*, p. 32.

by inducing pleasurable emotions and to instruct by expressing humanity's thoughts and actions.⁴⁸

In the second place, another ancient tradition linked both legal and melodic formulæ under the term *nomos*,⁴⁹ a link explored by the common lawyer, John Selden, in an early seventeenth-century philological treatment of the term.⁵⁰ During the period when North was writing, both law and music were dominated by procedural formalities—the 'forms of action' in law,⁵¹ on the one hand, and the 'forms of composition' in music,⁵² on the other hand. As a professional lawyer as well as a skilled musician, North was well acquainted with both legal and musical formulæ and the procedures generated by them.

Finally, North was the first writer to provide an 'historico-criticall' sketch of the history of music, a sketch that is modern, because based on a naturalistic, not a supernaturalistic explanation.⁵³ Because this sketch appears in a manuscript that was edited and published long after North's death, another lawyer has been credited

⁴⁸ See RN, *The Musicall Grammarian 1728*, p. 176; see also RN, *Cursory Notes of Musicke*, p. 216.

⁴⁹ For political and musical *nomoi*, see Anderson, *Ethos and Education in Greek Music*. For an argument that νόμος 'law' (i.e., enactment) is older than νόμος 'custom', see Shipp, *NOMOS 'Law'*. For a reverse argument, see Kelley, *The Human Measure*, p. x *et passim*.

⁵⁰ Selden, *Marmora Arundelliana ...* [1628] (2d edn., London, 1629); see Christianson, 'John Selden'. According to Randall, *Gentle Flame*, pp. 34, 45, 64–70, 110, Selden was a friend of RN's grandfather DN (1); and, in the tumultuous period of the 1640s, Selden and RN's father DN (2) were both members of parliament.

⁵¹ The transference of the term to natural philosophy is suggested in Book 2 of *Novum organum...* (London, 1620), where the jurist Francis Bacon, in one of his aphorisms about the actions of physical bodies according to a fixed law, stated that 'it is this law, with its clauses, that I mean when I speak of Forms; a name which I rather adopt because it has grown into use and become familiar'.

⁵² E.g., fugue, saraband, pavan, etc.; see RN, *The Musicall Grammarian 1728*, pp. 177–89 *et passim*.

⁵³ See *infra* Chapter 3 sect. 3.5.

with writing the first such history.⁵⁴ What, then, might have prompted two lawyers to create a completely new genre in a field unrelated to their profession? Insofar as North is concerned, the answer would seem to lie in a particular kind of English jurisprudence which will be introduced in Chapters 2 and 3 and presented in his manuscript, 'Of Etimology', which is edited here for the first time from a manuscript in the British Library.

⁵⁴ I.e., the magistrate John Hawkins, who provided a fully evidenced account, not just a sketch; see Kassler, *The Science of Music in Britain*, vol. 1, pp. 475–80, and Kassler in RN, *The Muscicall Grammarian 1728*, pp. 10–11.

PART I

An Interpretation of Roger North (1651–1734)



ROGER NORTH.

*Portrait of Roger North, aged about thirty,
engraved in 1824 by Wainwright
after the painting in oil by Peter Lely (A:Nk)*

Figure 3

OUTLINES OF A LIFE

1.1. SEEKING HONOURABLE FREEDOM

Roger North was born at Tostock, Suffolk, on 3 September 1651, the fourteenth and last child of Sir Dudley and Anne (*née* Montagu). For some years he lived intermittently at Kirtling, Cambridgeshire, in the house of his grandfather, the third baron North, who had dissipated the family fortune. As a consequence, he had required that North's parents reside with him, extracting from them more than a fair cost for lodging, even after they had purchased their own residence in 1638.¹ For from that date the couple divided their time between the two residences until the old lord died in 1667 and Sir Dudley succeeded to the peerage. Not long afterwards, he published a small octavo on the management of a great house,² his model being Kirtling itself, where, of 'Countrey delights', reading ('study') deserved the first place, then music.³

The old lord himself had been a lover of music and had employed several resident musicians in the household,⁴ so that early in life North and his siblings, both male and female, were taught

¹ See Randall, *Gentle Flame*, pp. 52–3, who also pointed out, p. 75, that despite years of careful management, DN (2) 'never shook off financial problems' that were a legacy of DN (1).

² The book, *Observations and Advices Oeconomical*, was published anonymously, for 1 shilling, on 28 June 1669.

³ See Randall, 'Country Delights', pp. 227–32.

⁴ For details, see Ashbee, *The Harmonious Musick*.

music ‘of some sort’.⁵ And thus began one of North’s lifelong pleasures, for, as he explains,

...musick was not onely the exercise of my youth, and that very early, and imprest by the continuall use of it, in the family of my education, but hath ever since bin my companion, and delight in all my solitudes as well as societys; ... therefore I may be alowed to have no small esteem for it; as a man of honour loves his freind as such tho not esteemed by others.⁶

Susceptibility to illness meant that other parts of North’s education were somewhat irregular. Initially, he was taught by a private tutor, then at the free school of Bury St. Edmunds, where he fell ill and returned home until 1663, when he and his brother Montagu were sent to the free school at Thetford.⁷ There, he learned Latin and busied himself ‘with squibbs, crackers, ... melting mettals, turning joynery, and such like exercises as the severity of our orders afforded time, and the place opportunity’.⁸ These exercises laid the ground for applied mathematics,⁹ another of North’s lifelong pleasures.¹⁰

⁵ RN, *Notes of Me*, pp. 153–4, and f. 107v in RN, Untitled essay (UK:Lbl) Add MS 32537: ff. 66–109v (middle period), for which see *NP* 5, pp. 49–107. See also RN, *Life/FN*, p. 24.

⁶ RN, *Cursory Notes of Musicke*, p. iii. For a summary of RN’s musical activities and for his writings on the philosophy, practice and history of music, see Kassler, ‘Roger North’.

⁷ For remarks on whipping, see *infra* RN, ‘Of Etimology’, ff. 24v, 29, 35, which imply that it may have been a common practice in grammar schools.

⁸ See f. 2 in RN, ‘Preface’ (UK:Lbl) Add MS 32545: ff. 2–6v (early period?).

⁹ As a youth, RN read a book by John Wilkins on applied mathematics, the two parts of which, on mechanical powers and motions, were named ‘Archimedes’ and ‘Dædalus’; see Wilkins, *Mathematical Magic*. RN cites this popular book both covertly and overtly in a number of writings; see, e.g., *NP* 3, pp. 74–5, and f. 368 in RN, Untitled (UK:Lbl) Add MS 32547: ff. 362–81 (date uncertain)—‘all the other mechanical powers are derived from the lever, as the Dedalus [i.e., Archimedes] shows’.

¹⁰ See RN, *Notes of Me*, pp. 99–101.

In 1666 he prepared for university at home by reading logic with his father. He also studied the principles of music and composition with one of his childhood teachers, John Jenkins; and in his spare time he conceived ‘a designe of making an organ out of my owne invention, a senceless but daring project’.¹¹ On 30 October 1667 he entered Jesus College, Cambridge, where he pursued his own course of study—‘a little phisicks, mathematicks, the peacable side of logick, some musick, and no conversation were my *cursus* at the university’—although his brother John, who ‘lent his name, as tutor, to enable my admission’, encouraged him to read some of the writings of René Descartes.¹² Then, in 1668 his education was again interrupted by an illness, so he spent an interval at home until his admission, on 21 April 1669, to the Middle Temple, London.

By the mid-seventeenth century the Inns of Court had declined as professional law schools,¹³ and this is the reason for North’s lament that of ‘all the professions in the world, that pretend to book-learning, none is so destitute of institution as that of the common law’, the profession of which, ‘comprehending the whole in due order, refers to 1. Reading; 2. Common-placing; 3. Conversing; 4. Reporting; 5. Practising’.¹⁴ Fortunately, however, North’s writings contain valuable information about his student exercises, as well as the course of reading he devised for himself and later recommended to others.¹⁵ According to his own admission, he was not ‘a regular student, to proceed in order, and take in all the year books’. But he read ‘the more moderne reports’, and he ‘digested them well by comon place’, which was

¹¹ See f. 2 in RN, ‘Preface’ (UK:Lbl) Add MS 32545: ff. 2–6v (early period?).

¹² See ff. 3–3v in RN, ‘Preface’ (UK:Lbl) Add MS 32545: ff. 2–6v (early period?); see also RN, *Notes of Me*, p. 92, and RN, ‘Letters’, p. 270.

¹³ Baker, *An Introduction*, p. 170; see also Holdsworth, *A History of English Law*, vol. 6, pp. 487–99.

¹⁴ RN, *A Discourse on the Study of the Laws*, pp. 1, 9–10.

¹⁵ See, e.g., RN, *Notes of Me*, pp. 160–75; RN, *A Discourse on the Study of the Laws*; RN, ‘Letters’, pp. 273, 280–82; and *infra* Appendix A and Appendix C: NORTH 1824. For additional information, see RN, *Life/FN*, pp. 13–22 *et passim*.

...a good foundation and preparative for me to build upon, what I afterwards learnt in practice. And I must owne to that [common placing], more of my skill in the law, then from hard reading. But without a competency of the latter, the other would not have done, no more then bare reading without practice, which pedantiseth a student, but never makes him a clever lawyer.¹⁶

Preliminary to being called to the bar, a student was to spend seven years in an Inn of Court and then some additional years as a barrister before being allowed to practise in open court.¹⁷ During the seven years of probation, students were required to participate in moots or mock actions and arguments upon legal points. These moots took place before readers (i.e., lecturers) selected by the Inns of Court, the students reciting the pleadings, and the case then being formally argued by the barristers and benchers—the principal officers of the Inns of Court.¹⁸ Although it has been supposed that the readings ceased by the middle of the seventeenth century,¹⁹ this supposition is called into question by North's statement that at the time of his admission, his brother Francis, then a bencher, 'kept his publique reading in the Middle Temple Hall' and that those 'exercises, when they were in use, were very beneficiall', because they gave 'councell upon new statutes'.²⁰

¹⁶ RN, *Notes of Me*, p. 160. For common placing, see further *infra* Chapter 1 sect. 1.4.

¹⁷ E.g., FN was called to the 'Utter Bar' on 28 June 1661, about six years after his admission to the Middle Temple, thereby becoming an 'utter' (outer) barrister or a pleader without the bar; see Martin (tr.), *Middle Temple Records*, vol. 3, p. 1229. When he was appointed king's-counsel (1668), he was called to the bench.

¹⁸ Benchers admitted students to an Inn, called them to the bar and, when required, disciplined members; see Baker, *An Introduction*, p. 161.

¹⁹ See, e.g., Holdsworth, *A History of English Law*, vol. 6, p. 491, and Cromartie, *Sir Matthew Hale*, p. 118.

²⁰ RN, *Life/FN*, p. 41; see also *ibid.*, pp. 41–2. FN was appointed autumn reader in 1671 and RN was appointed Lent reader in 1683; see Martin (tr.), *Middle Temple Records*, vol. 3, pp. 1249, 1348, 1351, 1354.

Nevertheless, during North's student years, self-help was the principal method of legal education, and this included attending some of the superior courts in term time so as to learn legal method. About his own attendance at Westminster Hall, he records that

I have known the Court of King's Bench sitting every day from eight till twelve, and the Lord Chief Justice Hales [i.e., Hale] managing matters of law to all imaginable advantage to the students, and in that he took a pleasure or rather pride; he encouraged arguing when it was to the purpose, and used to debate with the counsel so as the court might have been taken for an academy of Sciences as well as the seat of Justice.²¹

In addition, and because of the straitened circumstances of his parents, North added to his small allowance by 'court-keeping', that is, by presiding as the steward who transacts legal and financial business at the manor courts of his father and others.²² And being continually with his brother Francis,²³ he observed the routines of legal practice, at the same time gathering his law from books either borrowed or bought. Then, by the influence of that brother, who was already well established in the legal profession, he was called to the bar *ex gratia* on 29 May 1674,²⁴ before the requisite seven-year probation had passed.

Over the next few years he seems to have found time for various diversions. One involved seeking out performances of music, then called 'music meetings'; and this led to his joining the weekly

²¹ RN, *A Discourse on the Study of the Laws*, pp. 32–3; see also RN, *Notes of Me*, pp. 161, 171, 173. For Westminster Hall, see *infra* Part II: Glossary; for a description of its interior, see Baker, *An Introduction*, p. 37. Matthew Hale was chief justice of the King's Bench from May 1671 until his death in 1676, but his physical and mental powers began to decline about 1675 or somewhat earlier.

²² RN, *Notes of Me*, pp. 173–5 and 289 n.267, where he states that he kept his father's courts 'as long as he and my mother lived'. FN, too, had supplemented his allowance by court-keeping; see RN, *Life/FN*, pp. 21–4. And RN wrote 'Some hints about courtkeeping' (UK:Nr) for a nephew who had been appointed steward to the manor of Mildenhall in Suffolk, according to Korsten, *Roger North*, p. 22.

²³ As hinted, e.g., RN, *Life/FN*, pp. 39, 43–4, 46.

²⁴ Martin (tr.), *Middle Temple Records*, vol. 3, p. 1280.

meetings of the Gentleman's Society, a mixture of professional musicians and cultivated amateurs.²⁵ Another diversion was encouraged by his friend John Windham of Lincoln's Inn, who gave him 'a present of a yacht, built by himself', whence sailing became a particular pleasure. For the experience of it seemed more nearly 'a perfection of life ... then I was ever sensible of otherwise'.²⁶ But sailing also became one of North's 'mathematicall entertainements, for the working of a vessell, its rigging, and position of the sayles, doe exercise as much of mechanicks, as all the other arts of the world'.²⁷

On 26 January 1679 a fire swept through the Temple;²⁸ and George Jeffreys, then solicitor-general to the duke of York, ordered gunpowder and directed the destruction of a group of buildings before the flames engulfed the Temple Church and moved into Fleet Street.²⁹ Losing thereby his chamber in the Middle Temple, North found temporary accommodation at the residence of his brother Francis, who was then living in Chancery Lane near Serjeant's Inn.³⁰ For the next several years he involved himself in plans for rebuilding the Temple,³¹ designing the new gateway that leads to it³² and, with

²⁵ For some members of the Society, see RN, *The Muscicall Grammarian* 1728, p. 365.

²⁶ RN, *Notes of Me*, pp. 101–102. John, a son of Thomas Windham of Felbrigg, Norfolk, died of small pox on 2 June 1676. For brief mention of his barometric experiments, see f. 81 in RN, 'The world' (UK:Lbl) Add MS 32546: ff. 33–90 (middle period?).

²⁷ RN, *Notes of Me*, pp. 105–10, p. 110.

²⁸ RN, *Notes of Me*, pp. 110–16.

²⁹ Halliday, 'George Jeffreys'.

³⁰ RN, *Life/FN*, p. 191. Regarding RN's chambers after the fire and before his final assignment to a new chamber in 1685, see Martin (tr.), *Middle Temple Records*, vol. 3, pp. 1321, 1352–3, 1354–6.

³¹ In 1679 RN became 'melancholy', a condition his mother attributed to 'the more than ordinary charge that comes upon him' upon the rebuilding of the Temple; see Anne North to FN, 12 October 1679, RN, 'Letters', p. 217.

³² RN, *Notes of Me*, pp. 116–29; see also Colvin and Newman in RN, *Of Building*, pp. xiii–xiv, xx–xxi.

Christopher Wren, supervising the schedule of payments to the gateway workmen.³³ On 27 October 1682 he became a benchman and on 26 October 1683, treasurer of the Middle Temple.³⁴ Then, on 23 January 1685, as a reward for his efforts in the rebuilding, it was his fortune 'to comute, a ground interest' for a chamber over the gateway that proved 'the best in the society'.³⁵ For a period of time this chamber provided a venue for the Sunday evening meetings of some of North's siblings.³⁶

The rebuilding of the Temple had at least two further consequences. First, North was able to develop his interest in what he called 'building' and we call 'architecture', an interest he returned to later in life, when he recalled that his 'inclination hath bin too hard for prudence; and made me robb my profession, for pleasure, which was ever to me very great in the speculation, as well as the practise of mechanicks; and the consummate use of [both of] them is had by building'.³⁷ Second, because he was called upon to solve the problem of a new organ for the Temple Church, he was able to satisfy his youthful curiosity about the mechanics of organs and, later, to provide the first adequate description of the initiation of vibrations in flue pipes.³⁸ The problem of the new organ began in November 1684, when, as treasurer, North was asked to speak to Bernard Smith, then

³³ Martin (tr.), *Middle Temple Records*, vol. 3, pp. 1365, 1367. RN's design was implemented; and the gateway was completed in 1684 (though a plaque, still in place, attributes it to Wren).

³⁴ Martin (tr.), *Middle Temple Records*, vol. 3, pp. 1347, 1356, 1362. RN's successor was chosen on 24 October 1684.

³⁵ RN, *Notes of Me*, p. 128; see also Martin (tr.), *Middle Temple Records*, vol. 3, p. 1365. In the lease to Arthur Onslow dated 12 February 1714, the chamber is described as 'No. 1 South Side of Essex Court in the Middle Temple' (UK:Nr copy in Nro) 7809, dated 1714 and 12 March 1717.

³⁶ RN, *Life/FN*, p. 217.

³⁷ RN, 'Cursory Notes of Building....', *Of Building*, p. 3.

³⁸ Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 113–15.

organ maker to the king.³⁹ But a decision about a new organ required approval by officers of both Middle and Inner Temples. And at some point the latter Temple put forward the name of their own candidate, Renatus Harris, and thus began 'a competition'.⁴⁰

From 1669 Francis North had acted as his brother's mentor and patron, on the one hand, assisting him to improve his knowledge and skill in the profession, and, on the other hand, sending him a considerable amount of business.⁴¹ As a consequence, Roger North, being dependent on his brother, 'feared nothing so much, as being precarious and servile, for necessity', so that he had 'an ambition to honourable freedom'.⁴² Unfortunately, the path to that freedom is uncharted territory, because little is yet known about the details of North's legal practice during his years of servitude to Francis or even after that brother's death. In 1675 he rode the circuit when his brother was a judge of Assize.⁴³ He also acted as a counsel for John Evelyn,⁴⁴ as well as for the crown prosecutors in several treason trials.⁴⁵ And after the death of Francis, he was counsel for the city of Exeter and for King's College, Cambridge.⁴⁶

³⁹ Martin (tr.), *Middle Temple Records*, p. 1363. Later on, Smith built RN's organ; see *NP* 6, p. 55.

⁴⁰ See Martin (tr.), *Middle Temple Records*, pp. 1364, 1366, 1367, 1371–2, 1374, 1383, 1385, 1409, 1412, 1481; Davies, 'Records of the Inner Temple', vol. 2, p. 985. According to RN, *The Muscull Grammarian* 1728, p. 268, as a consequence of the competition, the two organ makers were nearly 'ruined'.

⁴¹ RN, *Notes of Me*, pp. 186–201.

⁴² RN, *Notes of Me*, p. 160.

⁴³ See his topographical account in RN, *Life/FN*, pp. 60–75.

⁴⁴ Evelyn, *The Diary*, vol. 4, pp. 340, 361, 546.

⁴⁵ RN was a counsel for the crown in the trial of Stephen Colledge (17 and 18 August 1681); see *The Arraignment, Tryal and Condemnation of Stephen Colledge for High-Treason....* (London, 1681), p. 16, and RN, *Notes of Me*, pp. 212–13, 216–18. He also was a counsel for the crown in the Rye House Plot (1683); see RN, *Notes of Me*, p. 189. For an assessment of these treason trials, see Havighurst, 'The Judiciary and Politics', and Roberts, *The Growth of Responsible Government*.

⁴⁶ RN, *Notes of Me*, pp. 197, 302 n.358. For clues to other professional work, see *ibid.*, pp. 188 and 296 n.324, 221 and 308 n.431.

North also was involved in what he calls ‘trusts’,⁴⁷ which included duties not only as an executor but also as a guardian of children. As he later recorded, he considered it necessary to fulfill these duties as a debt to humanity, else ‘the world would be worse then savage’; for even though trusts are onerous for ‘an honest man to meddle with’, the reward will be ‘in merit and the comfort of doing well, and surely if there be any merit to be obtained on earth, the honest and careful accomplishment of this duty is the price of it’.⁴⁸ And to the end of his life, he seems to have acted on this belief by undertaking numerous trusts,⁴⁹ of which three seem to have been particularly important to him—the first, after the death in 1680 of the portrait painter Peter Lely; the second, after the death in 1685 of his brother Francis; and the third, after the death in 1691 of his brother Dudley.⁵⁰

But North himself attributed ‘whatever prudence or knowledge I have passive or active ... to my experience and observation’ between 1682 and 1685.⁵¹ During the former year Francis North, as lord keeper of the Great Seal, had removed from the Common Pleas to the Court of Chancery, after which Roger North confined most of his practice there, whence his fees became considerable.⁵² And these fees increased when Dudley North served as a commissioner of

⁴⁷ I.e., arrangements whereby money or property is managed by a person (or group of trustees) for the benefit of another. RN, however, seems to use the term more broadly.

⁴⁸ See ff. 122–122v in RN, ‘Reason’ (UK:Lbl) Add MS 32526: ff. 120–123v (middle period).

⁴⁹ No systematic investigation has been made of this part of RN’s legal work, but information is retrievable from the wills, especially of his relations, as well as from, e.g., *Reports of Cases decreed in Chancery*, pp. 338–43, and Colles, *Reports of Cases*, pp. 10–14.

⁵⁰ RN, *Notes of Me*, pp. 237–53; see also Grassby, *The English Gentleman in Trade*, pp. 79, 112, 118, 222.

⁵¹ RN, *Notes of Me*, pp. 218–30, p. 223.

⁵² RN, *Notes of Me*, pp. 187–8, 219. According to Holdsworth, *A History of English Law*, vol. 6, p. 550, although RN made his fortune at the Chancery bar, after FN’s death the disfavour of the new chancellor, George Jeffreys, caused RN’s ‘practice almost to disappear’.

Customs, and when the work deriving from this source let Roger North 'into a knowledg of the Court of the Exchequer'.⁵³ He also held appointments as temporal steward to the see of Canterbury (February 1679)⁵⁴ and to the archbishop's liberties in Kent (19 February 1680) and Surrey (24 February 1680);⁵⁵ king's-counsel (26 October 1682);⁵⁶ solicitor-general to the duke of York⁵⁷ and to Mary of Modena (10 January 1685);⁵⁸ recorder of Bristol (20 November 1685);⁵⁹ reappointed solicitor-general after the duke came to the throne as James II (9 February 1686);⁶⁰ attorney-general to the queen and member of her council (19 January 1686).⁶¹

⁵³ RN, *Notes of Me*, p. 199. DN (3) served as a commissioner between 26 March and July 1684 and between March 1685 and April 1689; see Grassby, *The English Gentleman in Trade*, pp. 157–76.

⁵⁴ Korsten, *Roger North*, pp. 5, 254 n.37. William Dolben, the previous steward, was made a judge of the King's Bench in 1678, when he resigned in favour of RN; see also RN, *Notes of Me*, pp. 291 n.280 and 301 n.357.

⁵⁵ See RN, *Notes of Me*, p. 290 n.271. His appointments as seneschal of the temporalities of the counties, Kent and Surrey, are preserved at (UK:Nr copy at Nro) 7886 and 11355.

⁵⁶ Letters patent (UK:Nr copy at Nro) 7773. See also Korsten, *Roger North*, pp. 5, 254 n.39; and RN, *Notes of Me*, p. 301 n.357, 302 n.371. Note that in 1683 a correspondent reported, probably erroneously, that RN had been appointed 'judge' of Chester; see Thompson (ed.), *Correspondence of the Family of Hatton*, vol. 2, p. 36.

⁵⁷ Commission (UK:Nr copy at Nro) 7774. He succeeded Thomas Hanmer, third son and namesake of the 2d baronet; see RN, *Notes of Me*, pp. 223, 309 n.439.

⁵⁸ There is some doubt about the exact date of RN's appointment as solicitor-general to Mary of Modena; and no commission seems to have been preserved. See Millard in RN, *Notes of Me*, pp. 301 n.357, 313 n.464, who corrects Korsten, *Roger North*, pp. 7, 156 n.66.

⁵⁹ RN was elected recorder on the recommendation of a distant relation, Henry Somerset, first duke of Beaufort; see Korsten, *Roger North*, pp. 10, 257 n.83.

⁶⁰ Millard in RN, *Notes of Me*, pp. 301–302 n.357.

⁶¹ Appointment as the queen's attorney-general (UK:Nr copy at Nro) 7778. See also Korsten, *Roger North*, pp. 7, 256 n.66, also for members of her council, p. 257 n.85; see also Millard in RN, *Notes of Me*, pp. 301 n.357, 313 n.464.

On 21 July 1683 North was chosen a free burgess of Dunwich, Suffolk,⁶² which resulted in a brief parliamentary career, when on 28 March 1685 he was elected a member for Dunwich.⁶³ Although he was returned for the same borough in the election of 1689, that election was disputed; and he was replaced by another candidate.⁶⁴ The previous 1685 parliament had a majority of the 'Church of England' or 'court' party, that is to say, the Tory party; and it was this party that refused to implement James II's plans to repeal not only the penal laws prohibiting Catholic worship and evangelism but also the Test Acts excluding Catholics from parliament. In describing his activities in that parliament, North does not refer specifically to the penal laws and Test Acts. Nor does he mention that on 17 November 1685 he was appointed chairman of the committee of supply, the decision of which caused James II to prorogue parliament three days later.⁶⁵ But he does hint at a split in the Tory party, when he writes that 'some were for all the king's porposes whatever, others were for the crowne, but the laws also'.⁶⁶ As we shall soon discover, the 'others' include North himself.

Although he had been accustomed to frequent the home of Francis North for meals as well as for company with those he could be most 'free and merry',⁶⁷ the death of that brother in September

⁶² Elected freeman for the years 1683, 1684, 1685 (UK:Nr copy at Nro) 11376, 7590, 7588.

⁶³ Appointment to represent the borough in parliament (UK:Nr copy at Nro) 11424; see also RN, *Notes of Me*, pp. 224, 230–35, 309 n.441, 314 n.471, 315–16 nn. 471–6.

⁶⁴ On 18 January 1689 RN told Clarendon 'he was returned for the convention; but, he believed, his election would be disputed'; see Hyde, 'Diary', *The State Letters*, vol. 2, p. 150.

⁶⁵ See Korsten, *Roger North*, p. 9.

⁶⁶ RN, *Notes of Me*, p. 231. Some ten years later, according to Holdsworth, *A History of English Law*, vol. 10, p. 44, the left wing of the Tory party (the moderates) was nicknamed the 'whimsicals' and the right wing, the 'high fliers'.

⁶⁷ RN, *Notes of Me*, p. 241.

1685 set him emotionally adrift.⁶⁸ Of the many reasons that might be adduced for this, two must suffice. First, there was a considerable difference in age between the two brothers, so that Francis was not only a patron and mentor but also a kind of father figure to whom Roger remained grateful throughout his life, often describing Francis as his 'best' brother. Hence, the death of Francis was somewhat like the loss of a parent. However, there was a considerable difference in the characters of the two men, for Francis had a razor sharp wit and, as the saying goes, did not suffer fools gladly, whereas Roger, as the more sensitive of the two, could 'scarce brook the many mortifications, by litle contempts my brother, sometimes in jest, and often in earnest would put upon me'.⁶⁹

For eleven years North was 'kept under by authority [of Francis] and had Not my Inventions and arguments at all Encouraged'. But this situation began to improve after 1680, when Dudley, another brother, returned to England from a long residence in the Levant. For then 'My party grew Stronger and he [Dudley] Never failed to be on my Side If he thought I was in the right, for he would doe Justice against his bosome-friends'.⁷⁰ Thereafter, when Francis and Roger sharpened their argumentative skills by putting cases not only in law but also in other domains of knowledge, the elder brother 'indulged' his youngest brother to vary from him in most cases *save one*, for 'I was not a pretender to differ in opinion in politicks, whatever I did', with the result that 'I was of the same opinion' with Francis.⁷¹ And this leads to the second reason for North's state of mind mentioned above, namely, that

⁶⁸ RN, *Notes of Me*, p. 236: 'my brother dyed, and with him all my life[,] hope and joys'.

⁶⁹ RN, *Notes of Me*, p. 160.

⁷⁰ Quoted in Grassby, *The Gentleman in Trade*, p. 335. The 'bosom friends' of DN (3) were FN and JN, the latter of whom sometimes acted as a moderator in the 'disputes' between FN and RN; see Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 32–3.

⁷¹ RN, *Notes of Me*, p. 212; see also pp. 94–6. For an expression of RN's own 'opinion in politicks' after FN's death, see *infra* sect. 1.2.

...during my brother's life ... I lookt upon my self to be in my minority having scarce a caracter in the world of my owne, but supposed to act wholly in my brother's measures; I might bear the censure of my failings, but I had litle credit by my regular courses, becaus ascribed to him, and not to me, but after his death, I was turned up to shift in the world, as well as I could; *and this I make another great crysis of my life*, for from henceforeward all my actions were both really, and in appearance my owne.⁷²

And because of this crisis, North left his Middle Temple chambers on or shortly after Lady Day (25 March) 1686, taking up tenancy in a house in the Piazza, Covent Garden, leased from the Lely estate.⁷³ Here he continued to fulfil his trusts, as well as his other professional duties, including his duties as attorney-general to queen Mary of Modena.⁷⁴ For example, on 7 February 1688 he left 'a paper in writing to the lords of the treasury', showing that the suit in the Exchequer between the queen dowager Catherine of Braganza and Henry Hyde, second earl of Clarendon, also concerned the queen.⁷⁵ Upon learning about this paper, Clarendon took a copy of it to show to his 'council, who were all of opinion, that it was a superabundant act of officiousness in Mr. North to value himself, and that there was nothing in it'.⁷⁶ But Clarendon seems to have discounted that opinion, for on 18 January 1689 he wrote in his diary: 'I was at the Temple with Mr Rog. North, and sir Ch. Porter, who were the only two honest lawyers I have met with'.⁷⁷

⁷² RN, *Notes of Me*, p. 240 (italics mine).

⁷³ RN, *Notes of Me*, pp. 241–3. Covent Garden was near Maiden Lane, where DN (3) was then living. See also Dethloff, 'The Executors' Account Book'.

⁷⁴ RN, *Notes of Me*, pp. 229–30; see also the calendar of correspondence in Korsten, *Roger North*, pp. 244, 250, 251.

⁷⁵ For numerous references to this suit, see Hyde, 'Diary', *The State Letters*.

⁷⁶ Hyde, 'Diary', *The State Letters*, vol. 2, pp. 25–30.

⁷⁷ Hyde, 'Diary', *The State Letters*, vol. 2, p. 150, a statement often quoted but without the context. In 1668 FN and Porter were one of the counsels to creditors of the Navy; see Pepys, *The Diary*, vol. 9, pp. 140–41; subsequently, Porter was solicitor to the duke of York and, later, chancellor of Ireland when Clarendon was

North also was in frequent contact with his brothers Dudley and Montagu, who had been merchant partners in the Levant. For not long after the latter returned to England in 1686,⁷⁸ all three brothers were confronted with a difficult family situation in which a suitor claimed that a verbal contract to marry (which was binding in common law) existed between him and one of their sisters, a wealthy widow who denied the claim.⁷⁹ In addition to the threats of legal claims, the difficulties in this situation were compounded, first, because their eldest brother Charles, who had succeeded to the peerage in 1677, supported the suitor's claim for his own personal gain; and, second, because the suitor's cousin was the crafty and powerful politician Robert Spencer, second earl of Sunderland. Although at some point during this dispute, the sister married William Paston, second earl of Yarmouth,⁸⁰ the correspondence relating to her alleged breach of promise continued until 1689, during which time the North brothers were almost compromised by Yarmouth's involvement in Jacobite intrigues for which he was sent to the Tower in 1690 and again in 1692.⁸¹

In May 1689 Montagu North sailed for Turkey; but he was taken prisoner at Toulon, where he was held for three years.⁸² This left Dudley as Roger North's most frequent companion, with whom he shared his house, his leisure and his confidences, thus

viceroy in 1686, the year Porter was knighted. For a brief life of Porter, see RN, *Life/FN*, pp. 460–61.

⁷⁸ According to Grassby, *The English Gentleman in Trade*, p. 222, MN (1) resided with DN (3) between 1686 and 1689.

⁷⁹ For the documents (1686–89) and a helpful introduction to them, see Chan, *Life into Story*; see also Grassby, *The English Gentleman in Trade*, pp. 126, 221, 358, and Thompson (ed.), *Correspondence of the Family of Hatton*, vol. 2, p. 64.

⁸⁰ Chan, *Life into Story*, p. 96, inferred that the marriage took place sometime before 3 May 1687; but see the curious report in Colles, *Reports of Cases*, p. 11, which, if accurate, indicates an earlier date.

⁸¹ According to Grassby, *The English Gentleman in Trade*, p. 221, DN (3) regarded Yarmouth as a reckless, stupid and profligate speculator.

⁸² For details, see Grassby, *The English Gentleman in Trade*, pp. 59, 222–3, 259.

compensating North for the loss of his 'best' brother Francis.⁸³ In the process of working together on the business of trusts⁸⁴ and from 1680 diverting themselves with mechanical and experimental projects to discover how things worked, the affection between these two brothers increased.⁸⁵ But as Richard Grassby pointed out, Dudley's exposure to 'Levantine diseases and the strain of adjustment to English winters after living in a Mediterranean climate may have shortened his life'.⁸⁶ For in November 1691, already in ill health, he removed to Roger's house in Covent Garden, dying there suddenly on 30 December 1691. The following day Roger North wrote: 'No loss is like mine, that am left alone ... under burdens to oppress porters',⁸⁷ the burdens being the trusts that now included duties to Dudley, which he would have to undertake alone until Montagu's release from imprisonment.⁸⁸

For reasons that will be canvassed shortly, North had set in motion plans to leave London even before the death of Dudley, for on 26 December 1690 he signed a title deed for the Peyton-Yelverton estate in Rougham, Norfolk.⁸⁹ In 1691 he removed what remained of

⁸³ RN, *Notes of Me*, p. 236: 'some share was left to keep me from despair in the remainder of my brother Dudley, who was a most incomparable freind and companion.'

⁸⁴ For correspondence relating to the administration of FN's estate (1685–91), see (US:Lu) MS 221 and (US:SMh) mssHM 52322–52420. In 1690 RN and DN (3) also managed the trust of their eldest brother Charles, which also involved guardianship of his three children, William, Charles and Dudleya.

⁸⁵ RN, *Notes of Me*, p. 236: 'With him [DN (3)] I grew into close alliance and freindship which continued untainted to his death.'

⁸⁶ Grassby, *The English Gentleman in Trade*, p. 261.

⁸⁷ RN to Robert Foley, 31 December 1691, RN, 'Letters', p. 228; for the original, see (UK:Lbl) Add MS 32500: f. 139.

⁸⁸ For the will of DN (3), see *supra* Abbreviations. Note that the will includes a paragraph in which a 'schedule of papers' is attested to by RN and Henry Paman, a physician and long time friend of the North family. Note also that from 1678 Paman resided with William Sancroft, then archbishop of Canterbury, removing in 1689 to the parish of St. Paul, Covent Garden.

⁸⁹ According to both Korsten, *Roger North*, p. 250, and Millard in RN, *Notes of Me*, p. 295 n.314, the vendor was Yelverton Peyton; but the estate itself had been

Lely's drawings to his chambers in the Middle Temple for storage.⁹⁰ And sometime after Dudley's funeral in 1692, he commenced organising the extensive renovation and rebuilding of the manor house and improving the grounds for useful production.⁹¹ On 26 May 1696 he married Mary Gayer,⁹² daughter of Sir Robert Gayer of Stoke Poges in Buckinghamshire, a friend of the late archbishop of Canterbury William Sancroft, and a patron of Lely's friend, the painter and woodcarver Grinling Gibbons.⁹³ Not long afterwards the first of seven children was born. Apart from occasional visits to London or to relations settled in the provinces, North would spend the remainder of his life in Norfolk, where he sought to improve not only the Rougham estate but also estates purchased afterwards at Leziate, Methwold and Ashwicken.⁹⁴ As one of his agricultural experiments at the last place, he drained boggy land and attempted to

owned by Thomas and his wife Elizabeth (*née* Peyton) Yelverton, whose eldest son Robert died a few years after RN's purchase.

⁹⁰ See Dethloff, 'The Executors' Account Book', p. 21. Subsequently, the drawings, part of the property that remained after previous sales, were included in the final sale of Lely's property held in November and December 1694.

⁹¹ See RN, 'Cursory Notes of Building....', *Of Building*, pp. 77–88, 98–9, 101–103, and some of the contents in two notebooks (UK:Lbl) Add MSS 32504 and 32505 (both early period); see also Williamson, 'Roger North at Rougham', who used documentary evidence, as well as an analysis of physical remains in order to arrive at a clear idea of Rougham Hall (destroyed by RN's grandson, Fountain North) and its associated landscape.

⁹² Certificate of marriage (UK:Nr copy at Nro) 7854. Mary Gayer was thirty when married, i.e., she was born c.1666. The exact date of her death has yet to be discovered; but inferring from RN, 'Letters', pp. 267 and 269, she may have died before August 1729. Her surviving letters reflect the low standard of education given to women of her day, but this does not mean they are an index of her character.

⁹³ Sancroft, *Familiar Letters*, pp. 23–4, may have encouraged RN to transmit a proposal to the future bride's father.

⁹⁴ These estates are listed in RN's will (UK:Ltna) Prob 11/667. No study has yet been made of RN's involvement in the improvements he made to these estates or in his implementation of the new agrarian system described in Wilson, *England's Apprenticeship*, pp. 154, 246, 255 *et passim*.

grow hops (the experiment did not succeed).⁹⁵ He also provided legal advice to relatives and neighbours,⁹⁶ established a parochial library in Rougham church⁹⁷ and continued to fulfil his debt to humanity by undertaking trusts.

In 1688, as a consequence of the Revolution, James II fled the country at the end of the year; and early in 1689 the crown was offered jointly to the Dutch prince William of Orange and his wife Mary. Because North's father-in-law was a known Jacobite, some functionaries of the time suspected that North himself was one,⁹⁸ and some critics in more recent times have used this epithet when describing him.⁹⁹ But according to Francis Korsten, there are no indications that North became an 'active' Jacobite after the Revolution.¹⁰⁰ And even though he continued to fulfil his professional duties to the exiled queen, it is questionable, for reasons that will appear later on, that he was ever a 'passive' Jacobite. Nevertheless, it is worth pointing out that social mixtures of the type illustrated by North and his father-in-law were not at all unusual at the time.¹⁰¹ For example, North's brother Dudley married the granddaughter of a man who proclaimed the abolition of monarchy; his sister Anne married into a family with strong Whig and Presbyterian connections;¹⁰² and Roger North himself was a friend and remote relation of the republican Anthony Keck, a bencher of the

⁹⁵ Mason, *History of Norfolk*, vol. 2, p. 64. For other 'experiments', see *infra* Appendix B: [NORTH] 1713.

⁹⁶ See Korsten, *Roger North*, pp. 21–3, whose account draws on documents in (UK:Nr).

⁹⁷ For information about this library, see *infra* References: Manuscripts—RN Books (1)

⁹⁸ According to Korsten, *Roger North*, p. 19, RN's house was searched for weapons in 1696 and again in 1722.

⁹⁹ See, e.g., Cromartie, *Sir Matthew Hale*, p. 89.

¹⁰⁰ Korsten, *Roger North*, p. 18.

¹⁰¹ For examples and for an illuminating treatment of changing social values between 1603 and 1763, see Wilson, *England's Apprenticeship*.

¹⁰² See Grassby, *The English Gentleman in Trade*, p. 124.

Inner Temple (1677) and commissioner of the Great Seal (1689) under William III. Certainly, North and Keck discussed politics;¹⁰³ and they probably shared an interest in theatre. For North was an admirer of the actor Thomas Betterton,¹⁰⁴ renowned for his role as Hamlet, and Keck bought from Betterton a portrait of Shakespeare.¹⁰⁵

1.2. CHANGING DIRECTION

Although the lease of Lely's house marks the beginning of a turning point in North's life, the change became official in 1689, when an Act of Parliament was passed on 24 April requiring all public servants to take an oath of allegiance to the new king before 1 August and allowing six months' grace before deprivation.¹⁰⁶ As a result, North took two actions. First, he did not swear the oaths; and second, he retired from most of his public offices.¹⁰⁷ These actions have led some to conclude that North was an absolutist or 'high flyer'—that is to say, a 'high' Anglican Tory¹⁰⁸ who held to the old ideas as to the position of church and king, as well as to the old doctrines of divine right, passive obedience and non-resistance, doctrines which had been condemned by the Revolution at the end of

¹⁰³ See RN, *Notes of Me*, p. 223. The two also corresponded between 1703 and 1710; see the calendar of correspondence in Korsten, *Roger North*, pp. 237–42.

¹⁰⁴ See f. 26v in RN, 'Some memorandums, concerning musick' (UK:Lbl) 32532: ff. 1–26v (early period); see also RN, *Cursory Notes of Musicke*, p. 231; and RN, *The Musickall Grammarian 1728*, pp. 215–16, 266.

¹⁰⁵ See Vertue, *Note Books* (6 vols., Oxford, 1930–55), vol. 1.

¹⁰⁶ 1 William and Mary; see RN, *Notes of Me*, pp. 292 n.288, 294 n.306.

¹⁰⁷ RN retained some of his offices for a period of years after 1689; see RN, *Notes of Me*, pp. 175 and 290 n.271, 197 and 302 n.358.

¹⁰⁸ E.g., Korsten, *Roger North*, pp. 13, 56–94. See Miller, *The Restoration*, p. 79, for the emergence of the 'High Churchmen', a term that was uncommon before the reign of Anne. See also *supra* sect.1.1 n.66.

1688 and subsequent enactments.¹⁰⁹ For this reason, each of North's actions deserves to be assessed more carefully in order to determine both the principles behind, and the reasons for his actions.

To begin with the first action. This has been described as North's non-juring passive resistance or non-resistance (by force), as opposed to the active resistance advocated by John Locke,¹¹⁰ among others. But it is important to remember that passive resistance did not mean unquestioning obedience. For example, when in April 1688 James II began turning against the Anglican church by issuing a Declaration of Indulgence giving freedom of religion to both Protestant and Roman Catholic dissenters, numerous clergy refused to read the Declaration in their parishes, an action that has been described as 'the most striking example of mass disobedience of the reign'.¹¹¹ And in May 1688 further disobedience came in the form of a petition, signed by seven bishops, including archbishop Sancroft, which pointed out that the king's dispensing power on which the Declaration rested had been declared illegal in parliament, notably in 1663 and 1673.

Because the Declaration itself stated that the execution of the penal laws was to be suspended, it relied not only on the king's dispensing power but also on his suspending power. Of these two prerogatives, the suspending power applied to the abrogation of a statute so that it loses its binding force, as the Declaration well illustrates; whereas the king's dispensing power applied to a permission given to an individual to disobey a statute—in the Declaration, not just an individual but a large group of people. Because the Declaration depended on putting the law 'out of action' by means of both prerogatives,¹¹² James II decided to proceed against

¹⁰⁹ See Miller, *James II*, pp. 124–6, for James's conception of the monarchy and for his belief that its powers and the principle of hereditary succession were divinely ordained.

¹¹⁰ Dunn, *John Locke*, pp. 28, 31, 51–2, 54–7.

¹¹¹ Miller, *James II*, p. xi.

¹¹² Holdsworth, *A History of English Law*, vol. 6, p. 217; see also Miller, *James II*, p. 165. Had James II established his right to an unlimited suspending and

the bishops according to law.¹¹³ They were indicted and committed to the Tower for trial; and on 11 June the cabinet council altered the charge in the bishops' indictment from 'scandalous libel' to the more serious crime of 'seditious libel', that is, the intentional publication of defamatory words that reflected upon the government. When the trial began on 29 June, there were four judges, one hostile, one moderate and two completely against the dispensing power, thereby leading the jury to find the bishops not guilty.¹¹⁴

In his posthumously published *Examen*, North offers a long digression that is related to this case, when he summarises the position of the '*Passive-Obedience Men*' as a way of stating his own principles.¹¹⁵ Who are these men? According to North, they are 'the most express Defenders of the Laws against unbounded Prerogative; as was demonstrated by the heroic Carriage, towards the Government, of some of the enthronised Clergy'—the seven bishops. The main points of their (and his) position are that the terms 'passive obedience' and 'non-resistance' are synonymous;¹¹⁶ that the doctrine of passive obedience applies not to the king but to the supreme power in the state—the legislative power composed of the king and

dispensing power, he would have moved in the direction of emancipating himself from the control of parliament.

¹¹³ For an analysis of the Case of the Seven Bishops, see Hamburger, 'The Development of the Law of Seditious Libel', pp. 708–13.

¹¹⁴ Miller, *James II*, pp. 185–8. According to Holdsworth, *A History of English Law*, vol. 6, p. 222, the case makes clear that the king could not get 'either any lawyer of repute or any jury' to maintain the existence of a seditious libel.

¹¹⁵ For the digression, see RN, *Examen*, pp. 329–41. For a possible draft, see *infra* Appendix A (ff. 79v–82), where RN's argument is based on the 1351 Statute of Treason (25 Ed. III, stat. v. cap. 2), and where he criticises the clergy for misunderstanding the object of passive obedience. For extensions to the Statute, including those made in the time of William III, see Holdsworth, *A History of English Law*, vol. 6, pp. 399–400. According to Baker, *An Introduction*, p. 527, the 1351 Statute has 'provided the principal definition down to the present day'.

¹¹⁶ RN, *Examen*, p. 331: 'Non-Resistance and Passive-Obedience are synonymous, and mean ... a Negation of all active Force'.

the two houses of parliament;¹¹⁷ that the doctrine of passive obedience is ‘a Principle of Liberty and Security’, not of slavery;¹¹⁸ and that the maxim, ‘*the King can do no Wrong*’, applies not to the king’s person but to his public capacity as the executive power, because ‘all Acts of the Government, against Law, are Nullities’, that is to say, legally null and void.¹¹⁹ Indeed, North writes that the ‘Excellency’ of the English constitution is due to the procedural formalities of the common law, so that

...all Acts of the Crown against Law, are meer Nullities; and all, that act under them, are obnoxious [i.e., liable] to the Law, and so far from being protected, that they may be questioned and punished by that very Power, against whom its own Command is no Defence or Justification. And, for this Cause, all authentic Commands are put in Writing, or sealed,¹²⁰ or no Person, served with such Command, can be prosecuted for Contempt in not obeying. For the party may know, by that, if it be a legal Command, that requires active Obedience, or not; and then by whose Fault it is sent forth, whereby the proper Officer may be brought to answer for the Delict [i.e., violation of law]. This Constitution never was heard of in any State but

¹¹⁷ RN, *Examen*, p. 333: ‘by indubitable Law and Right, the Crown, with the States of Parliament, are to all Intents the supreme Authority, being what is termed the *Legislative Power*, which no Subject ought to gainsay or resist’.

¹¹⁸ RN, *Examen*, p. 338: ‘For can any Man be free, and safe from the Outrages of oppressive potent Neighbours, who doth not live under a Power sufficient to keep the Peace and protect him?’

¹¹⁹ According to Roberts, *The Growth of Responsible Government*, p. 4, this maxim, which first appeared in ‘its modern guise’ in the fifteenth century, conceals three distinct, though related, principles: (1) ‘that the King cannot act himself, but must always act through a servant’; (2) ‘that a servant of the King should refuse to execute an unlawful command’; and (3) ‘that a servant cannot plead the King’s command to justify an unlawful act’.

¹²⁰ I.e., the royal will is expressed only through procedural formalities—writs and seals (in Chancery the great seal, in the Exchequer the privy seal and in the secretary’s office the signet). For the various kinds of writ, see Baker, *An Introduction*.

the *English*, nor is it extant in Form under any other Government upon Earth....¹²¹

North, therefore, did not subscribe to the absolutist ('high flying') doctrine of the divine right of kings;¹²² rather, he held the doctrine, then called 'mixed monarchy',¹²³ that both king and the two houses of parliament are necessary parts of the constitution, the powers of which are defined by the common law.¹²⁴ What is more, the passage quoted above brings out clearly North's strong belief in the principle known as the rule of law, according to which all power must be warranted by law, so that no power is outside the law.¹²⁵ For 'there is not, nor can there be, any Power upon the Face of the Earth, above, or without Law'.¹²⁶

It has been supposed that North's second action, retirement from public life, was consequent on his non-juring passive resistance. But this supposition is called into question when other, interlinked factors are considered. North himself remarks on his 'uncurable unfitness for a court interest'.¹²⁷ And Francis Korsten drew attention to North's increasingly uneasy position during the reign of James II, when he was 'constantly forced to defend himself and his brothers', so that 'his sense of dissatisfaction with the world of politics

¹²¹ RN, *Examen*, p. 340.

¹²² DN (3) did not subscribe to absolutism either, according to Grassby, *The Gentleman in Trade*, pp. 123–4, who erroneously described RN as 'doctrinaire'.

¹²³ I.e., the representation of the constitution introduced by John Selden; see *infra* Chapter 2 sect. 2.5.

¹²⁴ See Holdsworth, *A History of English Law*, vol. 6, p. 283, regarding the opposition in England to the theory of the divine right of kings, which was of 'a purely secular character, based on the traditional reverence of Englishmen for the common law, and on the ascertained powers and privileges of Parliament'.

¹²⁵ See Baker, *An Introduction*, p. 143, regarding the rule of law principle, which 'treats all exercise of authority as subject to the control of the regular courts of law and furnishes the subject with a legal remedy when any official, however mighty, exceeds the power which the law gives him.'

¹²⁶ RN, *Examen*, p. 335.

¹²⁷ RN, *Notes of Me*, p. 230.

deepened into a feeling of disillusionment and a distrust of those engaged in governing the country'.¹²⁸ But T. H. Birrell gave a very specific reason for North's retirement, when he suggested that it was marked not by the arrival of William III but by the appointment of George Jeffreys to the chancellorship.¹²⁹ Although Birrell provided no support for his suggestion, there is a considerable amount of evidence that gives it plausibility.

For example, North describes Jeffreys' behaviour as uncivil and as consisting of 'indecent affronts', 'contempts' and other 'ill usage', including various 'arts and rudenesses' to force (in vain) the resignation of Francis North as lord keeper.¹³⁰ And after the death of Francis, Jeffreys turned on Roger North himself, subjecting him to a 'formall rating, and to a degree, as such who knew not his way, would have concluded him madd'.¹³¹ But it would be a mistake to conclude that Jeffreys' incivility, however grating, was the main reason for North's retirement from public life. Instead, evidence points to a different reason, namely, the unscrupulous, even illegal means that Jeffreys used to cultivate and to keep the royal favour so as to secure his own advancement. For illustration, consider the following three historical events.

The first event concerns the illegitimate son of Charles II, James Scott, duke of Monmouth, who led an insurrection against James II in the west country and was defeated at Sedgemoor in 1685. In the 'bloody Assizes' that followed Monmouth's rebellion, Jeffreys, as judge, stretched the law of treason even more than usual, thereby pleasing the king who made him lord chancellor following the death of the lord keeper Francis North. Since Roger North was one of the counsel for the prosecution in the trials of some who

¹²⁸ Korsten, *Roger North*, p. 16.

¹²⁹ Birrell, 'Roger North and Political Morality', p. 285.

¹³⁰ RN, *Life/FN*, pp. 109, 115–17.

¹³¹ RN, *Notes of Me*, p. 241. According to Holdsworth, *A History of English Law*, vol. 6, p. 529, Jeffreys' 'licence was unrestrained; with the result that he was more universally hated than any judge before or since, both by the public at large, and by his fellow lawyers, whom he delighted to hold up to ridicule both in and out of court'.

supported Monmouth's rebellion,¹³² he would have had direct experience of Jeffreys' conduct as a judge.¹³³ The 'bloody Assizes' were treason trials; and as penal policy for treason was severe, some judges, unlike Jeffreys, sought ways to avoid the penalty or, at least, its rigorousness.¹³⁴ North claims that his brother Francis was 'avers to penaltys, especially if they were very rigorous', so that 'when Jefferees made such a carnage of Monmouth's party in the west after the rout at Sedgmore, his Lordship hearing of it, took an opportunity to wish his majestie to consider if it were not enough; and if I remember rightly his Lordship sayd that orders were sent to give a check to it'.¹³⁵ North himself shared his brother's aversion, as is clear from his critical reflections on the nature and use of punishments, the sum of which is as follows:

...Penalties are the worst Means of enforcing the Observance of Laws. If it can be done by milder Methods, that is, by the Inducement of Interest, or other Engagement of the free Will, it is infinitely better. Punitive Laws do not regulate so effectually, as Laws of Encouragement; For Men will follow Encouragements against Danger of Punishments; but will not go from Interest, if they understand it, into Danger. Wherefore, if any publick Concern can be so established, that it shall be the Interest of all Men to conform to it, there needs no Punishment to drive them. And many Things may be done by Methods and Encouragements, which Punishments will never obtain. And here lies the Art of Legislature [i.e., legislation], whereby publick Order is preserved without excoriating the

¹³² RN, *Notes of Me*, pp. 189–90, 297–9 nn.327, 329, 337.

¹³³ If the 1685 report of a trial for seditious libel is accurate, Jeffreys would have exhibited 'arbitrary and intimidating behaviour' towards the jury; see Hamburger, 'The Development of the Law of Seditious Libel', p. 708.

¹³⁴ See Baker, *An Introduction*, p. 512.

¹³⁵ RN, *Life/FN*, p. 130. If RN does 'remember rightly', then the orders seem to have been issued too late in the proceedings, because a very large number came to trial. For some estimates, see, e.g., Thompson (ed.), *Correspondence of the Family of Hatton*, vol. 2, p. 60; Miller, *James II*, pp. 141–2; see also Halliday, 'George Jeffreys', who stated that 1,381 were tried, most were convicted and sentenced to die, approximately 200 were executed and the rest transported.

Subjects. Punishment is odious and cruel; to be avoided all Manner of Ways; especially in a tender-hearted Clime as ours is.¹³⁶

The second event dates from the beginning of 1686, when James II and his ministers sought to establish the legality of the king's dispensing powers by means of a test case and a manipulation of judges through sackings.¹³⁷ On 28 March 1686 Sir Edward Hales, a Catholic officer, was prosecuted for holding office contrary to law but pleaded the king's dispensation.¹³⁸ On 21 June of the same year, eleven of the twelve judges ruled that the king had a power to dispense with penal laws in particular cases and 'upon particular necessary reasons' and that of those necessary reasons 'the king himself is sole judge', a ruling that provoked considerable controversy concerning the way in which the dispensing power was used. As part of the king's campaign, prominent judges and lawyers were requested to give their views. In April, Jeffreys asked North to deliver his opinion in writing, and North's reply was that such a royal dispensation would be against the law.¹³⁹ This reply was well considered, for during the period when the dispensing power was 'ventilated', the court also began to attack archbishop Sancroft, who asked North, as steward to the see of Canterbury, to prepare a paper on the matter. North, therefore,

¹³⁶ RN, *A Discourse of the Poor*, p. 19; see also *infra* RN, 'Of Etimology', f. 88v.

¹³⁷ *Godden vs. Hales*. Note that during this period, the judiciary had to fight for independence from political control; see Baker, *An Introduction*, pp. 166–9.

¹³⁸ See RN, 'Notes of an argument in the case of [Arthur] Godden *versus* Sir Edward Hales: 16 June 1686. B.R. Intr. p. 2. Jac. 2. Rot. 180' (UK:Lbl) Add MS 32520: ff. 38–47v; see also RN, *Notes of Me*, pp. 230, 313–14 n.470. Sometime previous to this trumped up case, Hales had appeared before FN in court; see RN, *Life/FN*, pp. 230–31. In June 1687 Hales was appointed lieutenant of the Tower, so that in 1688 he held the seven bishops in custody. Upon their discharge, he demanded fees from them; but they refused on the grounds that Hales's commission and their detention were illegal.

¹³⁹ RN, 'An opinion given upon the Statute of 25 Car. 2d. cap. 2. at the command of the lord chancellor in April 1686' (UK:Lbl) Add MS 32520: ff. 35–37v.

...studied the point, collected all the law I could find about it; found reasonable distinctions to reconcile the umbrages some passages in the law books had given to it, all which I presented to him, which he took very kindly, and perceiving it to be crude, and ill penned, he gave it me againe, and desired I would perfect it, as I had designed, which soft reprehension was very oblidging, and then I went it over againe, and left it with him, as it is [in a copy] among my papers.¹⁴⁰

The third event began with the actions taken by James II to regulate corporations as part of his plan to repeal not only the penal laws but also the Test Acts.¹⁴¹ From October 1687 these actions were orchestrated by a Catholic committee of the privy council that included Jeffreys,¹⁴² whose 'exorbitances', according to North, consisted of pushing matters by 'irregular', that is, illegal means.¹⁴³ Then, in December, the king began a campaign of questioning members of parliament and others in his closet to find out how the country regarded his plan. During this closeting campaign, some asked time to consider the questions; some said that their consciences would not let them support the repeal; and others argued that it was unconstitutional to ask them to commit themselves before they had heard the debates in parliament.¹⁴⁴ North, who initially was interrogated by Jeffreys and then by the king in his closet, took the

¹⁴⁰ See RN, *Notes of Me*, pp. 184, 293–4 n.303, which implies the attack on Sancroft began before the Case of the Seven Bishops; see also RN, 'Authoritys for the prerogative' (UK:Lbl) Add MS 32520: ff. 35–37v (early period); 'Matter of fact concerning the dispensing power' (UK:Lbl) Add MS 32523: ff. 47–53v (early period).

¹⁴¹ See Miller, *James II*, p. 156. James needed to rid the parliament of Tories, who in 1685 had refused to repeal the penal laws and Test Acts.

¹⁴² See Miller, *James II*, pp. 179–80, 197–8; see also Korsten, *Roger North*, p. 11.

¹⁴³ RN, *Life/FN*, pp. 447–8.

¹⁴⁴ See Miller, *James II*, pp. 164–5, 173, 178–9.

third position, as his own account of ‘the most important act of my whole life’ makes clear.¹⁴⁵

According to W. S. Holdsworth, Jeffreys was the ‘type of man that the crown found to be most amenable to its wishes’, namely, a ‘political lawyer, without principles’.¹⁴⁶ This assessment is confirmed in North’s life of his brother Francis, where Jeffreys’ name occurs with some frequency. Of particular importance, however, is a digression that follows North’s account of the chancellor’s character.¹⁴⁷ The purpose of the digression is to show that the government of the day had to be careful what judges were to be trusted and that this issue ‘turnes upon the supposed integrity of the government’.¹⁴⁸ No judges are named, but one sentence provides the clue, for it is based on the principle that the use of power is to secure justice. The sentence is as follows: ‘The true distinction is when governements use powers that doe not belong to them (as high courts of justice [i.e., the Chancery]) and when they use onely such powers, as are properly lawfull, as the ordinary courts of the common law’. This sentence seems to imply that the highest judicial functionary in the land—lord chancellor Jeffreys—had been an instrument of the crown’s misuse of its prerogatives in relation to the

¹⁴⁵ RN, ‘An account of my being closeted about Michaelmas terme’, (UK: Nr) MS dated 9 December 1687, which is transcribed in Korsten, *Roger North*, pp. 223–6; see also RN, *Notes of Me*, p. 230. DN (3) was also closeted, but he was not interrogated by Jeffreys; see Grassby, *The English Gentleman in Trade*, p. 126.

¹⁴⁶ Holdsworth, *A History of English Law*, vol. 6, p. 204; see also Havighurst, ‘The Judiciary and Politics’, p. 246, regarding Jeffreys’ ‘insatiably ambitious and totally unprincipled’ character. For attempts to revise such assessments, see Kenyon, *Lord Chancellor Jeffreys*, and Halliday, ‘George Jeffreys’.

¹⁴⁷ See RN, *Life/FN*, pp. 454–5. Note that RN’s chief criticism is that Jeffreys lacked concern for ‘the weight of duty incumbent upon him’, a failing all the more egregious because when Jeffreys was ‘in temper, and matters indifferent came afore him, he became his seat of justice better then any other I ever saw in his places’. See also RN, *Life/FN*, pp. 87–8, 92–3, 108–9, 115–18, 121, 125, 127, 129–30, 165–6, 229, 233–6, 365, 382, 422, 425, 434, 457, 480.

¹⁴⁸ RN, *Life/FN*, p. 447, which concludes with a brief moral lesson: ‘If governements secure their peace, by doing onely what is lawfull to be done, all is right. If they suffer incroachments and at length dissolution, for want of using such [lawfull] powers, whatt will it be called but stupidity and folly.’

judicial system so as to avoid adjudication by the rules of the common law.

Birrell's suggestion, then, that Jeffreys himself was an important catalyst for North's retirement from public life has merit and deserves more detailed investigation. But his neglected study also contains other illuminating insights concerning North's conception of politics, his conception of law and his conception of the function of his class in the society of his day.¹⁴⁹ Although Birrell based his conclusions on only a handful of North's published writings,¹⁵⁰ the three conceptions run like currents through his many other writings, published and unpublished. For this reason, I shall summarise, with brief comment, Birrell's three insights, adding to them a provisional assessment of North's conception of religion, even though I will reassess some of these matters later on.

First, there has been a tendency to class North as a Tory in politics. But, as Birrell pointed out, this epithet not only oversimplifies North's position but also confuses it, for North's 'loyalty' to the monarchy springs from his conception of it as the fulfilment of personal service and as the embodiment of law, the stabilising factor in society.¹⁵¹ The guides of the public servant were to be his own moral integrity, his powers of judgment and the weight of his own experience coupled with traditional wisdom. Indeed, the complications of politics are the very reason why political actions should be governed by traditional wisdom, by which North means the duties to God, ourselves and others, as well as the moral wisdom found in 'ancient approved Maxims, that is, short Sentences, commonly called Proverbs, and the ordinary Fables and Apologues, in which the Experience and Judgment of Ages ... [is] collected and traditionally conveyed'.¹⁵²

¹⁴⁹ Birrell, 'Roger North and Political Morality', pp. 285–90 (politics), 290–92 (law), 292–8 (function of administrative and executive class).

¹⁵⁰ For these, see *infra* Appendix C: NORTH 1740 (Birrell's chief source), NORTH 1742 and 1744.

¹⁵¹ RN, *Examen*, p. 332: 'the Monarchy of *England* ... implies the whole Law'.

¹⁵² RN, *Examen*, pp. 352–3, p. 352, where examples of proverbs and fables relating to government are: (1) '*Honesty is the best Policy; Seldom comes a better;*

Second, North's traditionalism finds its fullest expression in his conception of the function of the common law, for, according to Birrell, North regards the common law—the law of England—as the living embodiment of a developing yet constant expression of a traditional moral order. Hence, the absence of any superiors (e.g., king or parliament) by no means necessitates an absence of law. For law is the active force that makes any society cohere as a society; and according to North, 'where none are declared and there is no Superior to exact Accounts, yet the Law of natural Justice and Equity prevail'. And where there is 'a legislative or supreme Power', it is just 'as much bound to common Justice and Equity, in every public Act, as a private Man is obliged to common Trust and Honesty'.¹⁵³

Third, North is fully aware that the cultural elite—the administrative and executive class—was losing its accepted place in society. According to Birrell, this loss of place dates from difficulties during the Restoration period to apply traditional moral values to political life.¹⁵⁴ For the dissociation of politics from such values was the peculiar contribution of that period, when politics was becoming the business of creating and moulding public opinion in the interests of immediate expediency.¹⁵⁵ This fact accounts for North's lament that 'the trouble and mischeifs' of political power 'are so insupportable that no wise honest person would medle with it but out

Changes never answer the End'; and (2) 'the Horse and the Stag. The Frogs and Jupiter. Peace made between the Sheep and the Wolves. Horned Beasts forbid the Court.' RN repeats some of these proverbs and fables in a number of his other writings; e.g., for the horse and the stag, see RN, *A Discourse of the Poor*, p. 84, and *infra* RN, 'Of Etimology', f. 64.

¹⁵³ RN, *Examen*, pp. 335–6. For RN's meaning of the terms 'natural justice and equity', see *infra* Chapter 2 sect. 2.4.

¹⁵⁴ Christiansen, *Discourse on History, Law, and Governance*, p. 95 *et passim*, suggests a date before 1660, when party (adversarial) politics began to emerge. For the growth of parties after 1660, see Miller, *The Restoration*, pp. 71–4.

¹⁵⁵ See, e.g., RN, *Notes of Me*, pp. 214–16, p. 216: 'the true ferment and spring which actuates the whole compage of this great body is secular interest, and gaine'. See also Holdsworth, *A History of English Law*, vol. 6, pp. 208–17, for an analysis of the efforts of both Charles II and James II to make the prerogative the predominant partner in the state and for the implication that this contributed to systematic bribery and other corrupt practices.

of a publique spirit of doing good to mankind, least of all for the sake of himself'.¹⁵⁶ And it also accounts for his further lament that men of 'true and sincere public Spirits' are so few 'in our Time', when 'Discouragements hinder the having any more for the future'.¹⁵⁷

Finally, and as already indicated, some critics have classed North as 'high church' or 'high Anglican' because of his non-juring passive resistance.¹⁵⁸ But these epithets, like the epithet Tory, require clarification, for although high-church Anglicans and non-jurors were, for the most part, of a similar theological persuasion, the refusal of non-jurors to change their allegiance from James II to William III led to their separation from the established church. Hence, Robert Cornwall has questioned the usefulness of viewing 'the high-church movement as a coherent and unified group', because 'in the interplay with political events, theological consensus diverged dramatically, resulting in irreconcilable differences and disunity'.¹⁵⁹ Furthermore, because the non-jurors pressed for the recognition of the church's independent spiritual authority far more forcibly than high churchmen in the established church did, the 'non-juror assertion of independence caused them to become, in essence, a nonconformist sect'.¹⁶⁰

Many critics have attributed the non-juring schism to political motivations, thereby making the non-jurors little more than the religious side of the Jacobite movement. But Cornwall has pointed out that 'the strongly theological rationale given in defense of the schism militates against this view'.¹⁶¹ And I would add that the same

¹⁵⁶ See f. 83v in RN, 'Mechanick notes' (UK:Lbl) Add MS 32540: ff. 81–118v (early period).

¹⁵⁷ RN, *A Discourse of the Poor*, p. 10.

¹⁵⁸ See, e.g., Korsten, *Roger North*, pp. 66–72, and Millard in RN, *Notes of Me*, pp. 38–9, both of whom ignore the differences between the high-church Anglicans and the non-jurors.

¹⁵⁹ Cornwall, *Visible and Apostolic*, p. 15; see also *ibid.*, pp. 20–43 for a useful summary of the contextual issues, especially the various competing views of the church and ecclesiastical controversies of the period.

¹⁶⁰ Cornwall, *Visible and Apostolic*, p. 77.

¹⁶¹ Cornwall, *Visible and Apostolic*, p. 14.

is true regarding the oaths of allegiance, for these were sworn with reference to God. As a consequence, North's action of not swearing would be better described as *a refusal to break oaths* made previously to James II.

As legal adviser to archbishop Sancroft, both before and after the archbishop's deprivation, it would be requisite for North to attain knowledge relevant to the theological issues, such, for example, as might reinforce the non-juring case for independent jurisdiction in spiritual matters.¹⁶² Indeed, this requirement may account, at least in part, for the considerable number of theological works that are listed in one of the hand-written catalogues of books that North once owned.¹⁶³ But evidence of books owned does not help to determine particulars of North's religious convictions, which may be gleaned here and there in his writings, as well as in his correspondence with the theologian Samuel Clarke.¹⁶⁴ In addition, the memorial written by North and placed in Rougham Church after his death includes the following:

He retired to his Country Seat in this Parish.
Where he lived many Years
Approving himself a sincere Son

¹⁶² Note that in 1691 RN also provided legal advice to George Hickes, another non-juring clergyman. For when Hickes was deprived of his post as dean of Worcester, he affixed to the entrance gate to the choir of the cathedral a claim of right against all intruders. But before putting this claim into its final form, he asked RN to determine whether 'there was a matter justly criminall', whether 'he would be carried into a legall charge of misdemeanour' and whether 'by no construction in it [i.e., the claim] could [a charge] be made [of] treason'; see RN to [Hilkiah Bedford, Jr.], n.d. (UK:Ob) MS Eng. Hist. b.2: f. 170v; see also (UK:Ob) MS Eng. Hist. b.2: f. 110 for RN's modifications to Hickes's claim of right. According to Harris, *A Chorus of Grammars*, p. 34, Hickes had reason to consult RN, because Sancroft had been informed that 'there was a warrant in Counsell' to seize Hickes 'for sedition & high misdemeaneer' and that 'it was much debated in Counsell, whether the warrant should not be sent out with a charge of High Treason'.

¹⁶³ RN Books (1).

¹⁶⁴ Neither the correspondence nor RN's preparatory notes have been edited and published. For an interpretation of the correspondence, see Korsten, *Roger North*, pp. 69–72. For Clarke's theology, see Gascoigne, 'Samuel Clarke'; for his moral theory, see Schneewind, *The Invention of Autonomy*.

Of the Church of England,
By his constant Attendance upon
Divine Service and Sacraments
According to the Rites and Ceremonies of it.¹⁶⁵

But in North's surviving manuscripts, there is no expression of a personal, meditative Christian spirituality such as was fairly common in his age,¹⁶⁶ an absence that Peter Millard accounted for in two ways. First, there is the pre-eminence of law in North's thought; and secondly, there is North's interest 'in the doings of this world rather than the next'.¹⁶⁷ As a practising Christian, therefore, North seems to have followed in the footsteps of both his grandfather and his father. In 1640 the old lord North had written that 'Gods Service and Worship is the Substantiall and Morall part; Episcopacy, and this or that Form, but the Ceremoniall, and I would be sorry to see cutting of throats for Discipline and Ceremonie: Charity ought to yeeld far in things indifferent'.¹⁶⁸ And North's father also believed that the basic points of faith were few.¹⁶⁹ Provisionally, then, we might conclude

¹⁶⁵ The entire memorial is included in Jessopp's edition of RN's autobiography; see *infra* Appendix C: NORTH 1887 ('Supplementary', p. lxii).

¹⁶⁶ According to Grassby, *The Gentleman in Trade*, p. 207, since DN (3) had 'no sense of calling, or aspirations towards perfection', he, too, did not incline towards 'either spiritual introspection or self-righteousness', though 'he was content formally to observe inherited rituals'.

¹⁶⁷ Millard in RN, *Notes of Me*, pp. 38–9.

¹⁶⁸ North, *A Forest promiscuous*, pp. 231–3 (dated 1640), p. 232. By 'things indifferent' is meant those matters on which the Church had given no decision; hence, they were inessentials. For this doctrine (*adiaphora*) after 1688, see Cornwall, *Visible and Apostolic*, pp. 51–4, 119.

¹⁶⁹ See Randall, *Gentle Flame*, pp. 63–4, who pointed out that DN (2) was 'one of those Anglicans whose rather stable position in the *via media* could be viewed as somehow becoming increasingly liberal because the Laudians were moving the Church of England farther and farther to the right, imposing a strictness comparable to that which Sir Dudley found distasteful in the Presbyterians and Independents'.

that North's Christianity was of the practical sort—as in law, so in religion, deeds outweigh words.¹⁷⁰

1.3. WRITING IN RETIREMENT

Words, of course, are common coin for a writer, so it is important to note, first, that in leasing Lely's house in Covent Garden, North sought refuge not only in solitude but also in writing, and, second, that after his removal to Rougham, he continued to write until nearly the time of his death on 3 March 1734. But he was well prepared for this retirement activity, because even before 1686 he had been attentive to 'philosophy, musick, mechanicks, and study', because he had both 'a disposition to bear my owne company' and 'a sound head to bear long puzzling about any thing, whither wrighting, or drawing, or ought els of minute inspection'.¹⁷¹ Still, it was the practice of writing that gave him 'more ease in any posture, nor is my mind less distract or discomposed then in the exercise of that'. Indeed, North conceived writing and music on analogous terms, for in both what seems at first 'uneasy' becomes easy with practice, for practice 'creates a dexterity in good order, and orthograpy, and which is more, breeds a style; it makes composition easy'.¹⁷²

What, then, were North's purposes in writing, exclusive of motivation? If we begin with his professional duties, it seems certain that he must have written a great deal for the purposes of providing legal advice to others. Yet, only a small number of his manuscripts have so far been identified as falling into this category. Of considerable interest are the legal 'opinions, tracts and advice framed upon several occasions',¹⁷³ which he preserved 'for private memory

¹⁷⁰ See, e.g., Coke, *Selected Writings*, p. 981; Baker, *An Introduction*, p. 436; and *infra* RN, 'Of Etimology', f. 38v.

¹⁷¹ RN, *Notes of Me*, p. 242.

¹⁷² RN, *Notes of Me*, pp. 242–3; cf. RN, *Cursory Notes of Musicke*, p. iv.

¹⁷³ With the exception of ff. 43v–81, for which see *infra* Appendix C: NORTH 1753, (UK:Lbl) Add MS 32524: ff. 1–87v consists of four letters to 'Sir' (not necessarily the same person) in answer to (1) a query regarding a bill of pains and

and use but not for the public'.¹⁷⁴ Recall, too, that North was steward to the see of Canterbury and to the archbishop's liberties. This position was not secretarial, as Mary Chan has described it.¹⁷⁵ Rather, as North himself explains, the office of steward had three patents.¹⁷⁶ The first was judge of the palace court of Canterbury, a court that had jurisdiction 'in all personall actions of any value arising within the liberty, that is[,] in any of the townes, whereof the church of Canterbury had the senioralty, which is a large circuit in the county of Kent'.¹⁷⁷ The other two patents were office of keeper of the liberties in the same county and stewardship of the manors and keeper of the liberties in the county of Surrey. These patents were 'ordinary, to the archbishops, having the conduct of all his law buisnesses', so that North was Sancroft's 'standing councill on whom he leans in all matters of law, which in his post are many, frequent, and of great importance, as well to the publik, as [to] his private concernes'.¹⁷⁸ In short, North would have provided legal advice to Sancroft; and such advice, if written down, would fall within a class of writings that are the result of his professional duties.¹⁷⁹

penalties about to be introduced in parliament, January 1690; (2) a query 'whither by the late Queen's death [in 1694] the present parliament be dissolved or not', 1695; (3) a query 'whither the state oaths may not be taken, rather then, upon the late law, stand convict of popish recusancy', 30 April 1696; and (4) a query emerging upon the death of James II regarding 'what alteration is of the case with relation to persons that have refused to take the oaths', (c.1701).

¹⁷⁴ See f. 13 in (UK:Lbl) Add MS 32524: ff. 1–87v, which is a title page for 'Volume 2d' collected 'out of loos papers'. To these letters may be added the legal advice conveyed by correspondence to family or relations; see, e.g., Chan, *Life into Story*.

¹⁷⁵ Chan in RN, *Life/FN*, pp. ix, xxix, xxxviii, xli; and Chan, *Life into Story*, pp. xxxi–xxxii.

¹⁷⁶ RN, *Notes of Me*, pp. 175–6.

¹⁷⁷ RN, *Notes of Me*, p. 175.

¹⁷⁸ RN, *Notes of Me*, p. 177. For one published piece, see *infra* Appendix B: [NORTH] 1690.

¹⁷⁹ See RN, *Notes of Me*, pp. 184–5, who also identifies some of the subject matter of his advice.

But North also wrote to fulfil certain filial duties, as appears overtly in various versions of the lives of his brothers.¹⁸⁰ For example, in the final version of the life of Francis, North declares:

I was immensely indetted to him for favours (undeservedly) received in his life time, and what can I bring towards quitting that score, but a small offering at the shrine of his honour? There is a conscience respecting the dead, as well as the living, and ... I should account my self an offender against all duty, and obligation, if I did not dedicate a competent portion of my time, in retrieving the almost lost character of my honourable relation, and patron....¹⁸¹

And in the final version of the life of John, he indicates that

The moral intent here is to do justice to the person, and service to his family, both which may result from the present endeavour to retrieve his character. And this is no slight task because he took express care that nothing real should remain whereby in after times he might be remembered, and my memory is now the repository of most that may be recovered of him.¹⁸²

The reference in the above passage is to John North's request that his brother Francis, the executor, 'burne all books, and papers in his owne hand wrighting', a request the executor performed 'most punctually'.¹⁸³ But, as Roger North discovered after his removal to Covent Garden, a notebook had escaped the flames, so he made a copy of its contents, at the same time that he was in process of sorting through Francis North's papers, making copies of some, perhaps all, before he passed the originals to that brother's eldest child.¹⁸⁴ In December 1690, already in ill health, Dudley North

¹⁸⁰ See also RN, *General Préface*, pp. 81–2.

¹⁸¹ RN, *Life/FN*, p. 9.

¹⁸² RN, *Life/JN*, pp. 94–5.

¹⁸³ RN, *Life/FN*, p. 98. For JN's will and sentence, see *supra* Abbreviations.

¹⁸⁴ See, e.g., RN, *Life/FN*, pp. 176 n.1, 300, 374 *et passim*.

moved from his own house to the one in Covent Garden in order to complete his book on trade; and after his death a month later, Roger North added an important preface of his own before seeing the whole through the press.¹⁸⁵ As a trustee of Dudley's estate, he also sorted through that brother's other manuscripts, making copies of some of them. And when he left London for Rougham, he took with him a large packet containing all the copies he had made.

From this preparatory work North discovered that he also could fulfil his duties by realising more fully certain thoughts his brothers had expressed in notes, memoranda or fragmentary writings. In the case of Francis North,¹⁸⁶ this kind of purpose began during the period in Covent Garden, when Roger North discovered, or perhaps rediscovered, that brother's tract, *A Philosophical Essay of Musick*, published anonymously in 1677.¹⁸⁷ For he declared his intention 'to inlarg a little upon' the *Essay* 'in some notes upon that treatise, if it be printed againe'.¹⁸⁸ And between c.1693 and c.1698 he actually started to write 'Some Notes' to that effect 'by way of Comment, and Amendment'.¹⁸⁹ But he soon came to realise that the hints in his brother's *Essay* required more than a critical comment; and thus commenced a series of remarkable writings on music, which he was still adding to, and modifying close to the time of his death.¹⁹⁰

During the 1670s Francis North had pursued a number of other projects besides music. For example, he was instrumental in the commercialisation of barometers, having shown Henry Wynne and other London tradesmen how to make them.¹⁹¹ In 1678 Samuel

¹⁸⁵ See *infra* Appendix B: [NORTH] 1691.

¹⁸⁶ See also *infra* Appendix B: [NORTH] 1698 and Appendix C: NORTH 1824.

¹⁸⁷ For an edition of, and commentary on this tract, see Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 21–88, 135–70. Note that the word 'essay' in its title means trial or trial specimen, i.e., a test, proof, experiment or assay.

¹⁸⁸ RN, *Notes of Me*, p. 160.

¹⁸⁹ I.e., RN, 'Some Notes upon an Essay of Musick', pp. 179–200.

¹⁹⁰ See Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 104–9.

¹⁹¹ See RN, *Life/FN*, pp. 248–49; see also Middleton, *The History of the Barometer*, pp. 82, 100–101, 103, and Bryden, 'Sir Samuel Morland's Account'.

Morland published a broad sheet description of a newly invented balance barometer ('Stathm-Aeroscope'), which concluded with the following challenge:

...as for the true Reason of this thing [the barometer] and how the Mercury is pendulous from the Topp of the Glass, and how it Comes to pass, that it falls to such a Number of inches from the restagnant Mercury, in any pipe or any Length, or any Diameter— The Author leaves all those Enquiries to men of better Skill and Judgment.¹⁹²

Morland's challenge, to which Francis North replied, was the catalyst for Francis and Roger North's 'hot dispute' about the barometer 'and the reasons of its keeping time with the weather'.¹⁹³ As was their custom in such disputes, the arguments were reduced to writing,¹⁹⁴ although in the case of the barometer, only Roger's argument seems to have been preserved.¹⁹⁵ Nevertheless, it is probable that the argument of Francis was along the same lines as that which he had presented to Morland and which Roger rediscovered about the same time that he rediscovered the 1677 tract on music. For in the 1690s

¹⁹² This broad sheet no longer survives, but its contents are preserved in a manuscript copy, for which see Bryden, 'Sir Samuel Morland's Account', pp. 361–4.

¹⁹³ RN, *Notes of Me*, p. 201. See also RN, *Life/FN*, pp. 245–7, 260–61; and for a summary of FN's paper, see *ibid.*, p. 246. Note that RN's phrase 'keeping time' continues the pendulum analogy in Morland's paper; note also that the pendulum is an important model in RN's mechanics of music, as well as in some of his other physical theories (e.g., tides).

¹⁹⁴ See Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 26–7; see also RN, *Life/FN*, pp. 261–6.

¹⁹⁵ RN, 'An essay concerning the reason and use of the baroscope', (UK:Lbl) Add MS 32543: ff. 23–33v (early period), written in a legal hand by an amanuensis, with RN's additions in his own hand. This 'essay' refers to an experiment with a Florence flask performed with a 'friend'. The friend is identified as DN (3) and the date of the experiment given as 'about 1680' in a full description of the experiment; see ff. 103–104, 'A pneumatick flask representing to the naked eye, the connexion between the rarity and condensation of the air, and the corresponding draught and humidity of it' (middle period?), a memorandum in RN's notebook (UK:Lbl) Add MS 32549: ff. 103–109v.

he began to revise his own first argument; and this revision led to further writings and revisions on the subject of the barometer, one of which reached a finished state complete with a preface 'To the publisher' and an 'Index', although the manuscript was never published for reasons still to be ascertained.¹⁹⁶

A similar pattern emerges with his brothers John and Dudley.¹⁹⁷ In regard to the former, it has been mentioned that one of his 'pocket portfolio books in octavo' had survived the 'conflagration', that is, the executor's burning of the papers. Although to Roger North the entries in the notebook appeared 'in a rude dishabille', yet they seemed of 'too great value to be lost'. So he first made a rough copy of his brother's 'extemporaneous thoughts upon various subjects', which were 'out of all order, some with ink but most with red chalk or black lead, clapped down there, *ex improviso*'. And he then digested the contents 'in a kind of order under heads', intending to preserve his brother's thoughts in that manner.¹⁹⁸ But one subject was of such great extent that it could 'not well be contracted' under a head; and this subject was natural philosophy, which John North had intended to treat historically.¹⁹⁹ In an effort to realise this intention, Roger North produced several different historical (actually, historico-critical) treatments of natural philosophy, the last of which he included in the final version of the life of John North as 'a dissertation of the new, and moderne new

¹⁹⁶ For the revision of the c.1680 text, see RN, 'An essay concerning the reason and use of the baroscope', (UK:Lbl) Add MS 32543: ff. 1–22v (early period). See also RN, 'The air-gager...' (UK: Lbl) Add MS 32542: ff. 1–114v (middle period?); and the finished work, RN, 'Essay of the barometer' (UK:Lbl) Add MS 32541: ff. 1–297v (late period?).

¹⁹⁷ For JN, see *infra* Chapter 3 sect. 3.3. For DN (3), the pattern is less obvious; but see *infra* Appendix B: [NORTH] 1714 and Appendix C: NORTH 1753.

¹⁹⁸ RN, *Life/JN*, pp. 134–7, p. 134. For RN's rough copy, see portions of (UK:Lbl) Add MS 32517 (early period); for his fair copy arranged under heads (theologia, critica, filosofica, politica), see RN, 'Notes of Dr. North' (UK:Lbl) Add MS 32514: ff. 167–227v (middle period).

¹⁹⁹ RN, *Life/JN*, pp. 89, 95–6, 127–9, 131–2, 136.

philosofye, which may be perused or let pass ... according as the knowledg of late authors may have given a tast[e], or not'.²⁰⁰

In addition to writing from a consciousness of filial duty, whether overtly stated or covertly fulfilled, North also had a number of other purposes, which, following Horace's formula, *utile-dulci*, could be classed under the heads of pleasure (to remember, to pass the time, to entertain himself) or profit (to benefit others, including posterity).²⁰¹ But of the different purposes that might still be discovered, two interlinked purposes are extremely important, indeed central, to North's *practice* as a writer. For he regarded that practice not only as a method of testing his thoughts but also as a method of cultivating his manner of expression or style. To understand the background behind, and the scope of the first purpose, it is necessary to recall the exercises in putting legal cases, which began during North's student years in the Middle Temple and which provided a pattern for the private disputes with his brother Francis.²⁰²

From these exercises North learned two important lessons. The first lesson was that a method of 'contradiction, and opposition'

...regulates men's understandings, and makes them hunt for objections, put themselves in the places of opponents, and so at length determine, and in such manner as may be defended if opposition should come. But without such regard to opposition, we are captivated with the seeming justness of our thoughts, and prosecute consequences upon them into a miz-mase of error. [Whereas] ... opposition ... [drives] a man out of

²⁰⁰ See f. 1 in (UK:Lbl) Add MS 32524: ff. 1–166v (1728)—the final version of RN, *Life/JN*. Hereafter, the included 'dissertation', ff. 62–125v, is cited from the title at f. 62 as RN, '...a dissertation of the new and moderne (new) filosofye inserted'. For earlier versions of the 'dissertation', see RN, 'Authoritys' (UK:Lbl) Add MS 32546: ff. 207–230v (early period), and RN, 'The philosophy of Cartes and Newton' (UK:Lbl) Add MS 32548: ff. 32v–50 (middle period).

²⁰¹ See, e.g., RN, 'Cursory Notes of Building....', *Of Building*, p. 2; RN, *Cursory Notes of Musicke*, p. iii; and *infra* Appendix B: [NORTH] 1713 and [NORTH] 1714. For the completion of his debt to the 'transcendent subject' of music, see *infra* Chapter 3 sect. 3.5.

²⁰² See *supra* Chapter 1 sect. 1.1; see also RN, *Notes of Me*, pp. 100, 159–60, 201, and RN, *Life/FN*, pp. 244, 261–6.

beaten trite paths, and ... [prevents] his arrogating to himself inventions, which he was not author of, but have bin common before.²⁰³

The second lesson was the importance of having 'the perpetuall checks' of ingenious friends—by which he usually means his three brothers—especially if one's writings were 'to appear abroad', for 'men know no more how their sentiments, as they happen to express them, will be accepted, then they can guess at their readers' complexions'.²⁰⁴

By his fortieth year, however, North's 'friends' were all dead—John in 1683, Francis in 1685 and Dudley in 1691; and then it was his 'unhappyness to want such helps', for without his brothers 'the onely succedaneum [is] my owne reiterated self[,] expecting thence, perhaps half a freind, such as it is', although 'I have bin often admonisht by the *deuterai phrontides* [i.e., second thoughts,] so this my half freind is styled[,] to forbear scribbling'.²⁰⁵ But North did not forbear scribbling, for 'while I write, methincks I play', so that writing 'is not uneasy but a pleasure to sit as I now doe, passing the pen from side to side of the paper'.²⁰⁶ Hence, the physical act of writing, as well as the generative intention of a literary act, gave him notable pleasure. Through them, as we shall soon discover, he found freedom to create himself as a character in his writings, to multiply himself through the use of masks and to discover a personal voice for translating into words the ineffable quality of experience. And through them he also could put his first thoughts to the test of his 'reiterated self', that is to say, his 'second thoughts' or critical reflections on what he had written.²⁰⁷

²⁰³ RN, *Notes of Me*, p. 166. See also f. 83 in RN, 'Mechanick notes' (UK:Lbl) Add MS 32540: ff. 81–118v (early period), where he reiterates the importance of 'opposition and contradiction', so that 'for want of others[,] a man must contradict himself if he will know truth'.

²⁰⁴ See f. 4 in RN, 'Preface' (UK:Lbl) Add MS 32545: ff. 2–6v (early period?).

²⁰⁵ See f. 4 in RN, 'Preface' (UK:Lbl) Add MS 32545: ff. 2–6v (early period?).

²⁰⁶ See RN, *Notes of Me*, pp. 142, 243.

²⁰⁷ See, e.g., NP 6, pp. 7–9.

And here is one reason why a systematic study of the manuscripts is so important.²⁰⁸ For North's tests often led him to discard some pages or cross out parts of a manuscript, to revise other parts and even to produce complete rewritings. As a consequence, a large portion of his surviving manuscripts represent a continuing venture of exploration not only in the techniques of expressing his thoughts in writing but also in the process of thinking about thinking. Indeed, he himself suggests as much in a fragment of a preface, written in the 1690s, where he states:

Insatiable desire to know, ambitious thincking, care of preserving even the hints, and embrios of thought[,] designe of improving facility, as well as pleasure, in scribling, and courting a style, are a combination of inducements to what you find here, and also much more of like fustian [i.e., ill-sorted thoughts], in other places, which by their solemne appearing in books, seem to have had somewhat of the polite, [but] in truth are but extemporaneous sentiments, from one that writes swifter then thincks, and hath no test of his own thoughts but his review after writing.²⁰⁹

And in a finished work, which he began writing towards the end of the 1690s, he further suggests that

...it hath bin my way, ever since I thought I might pretend to compose English, to write my sentiments, such as they are, upon all ocasions.... And in this I have found 2 considerable advantages. First I prove [i.e., test] my notions by it. ... The other advantage is; I exercise a stile which is not had but by practise. I doe not say I can owne a stile, such as will pass muster, but I am very certein, I gaine ground, and have more of it, then, without much wrighting I could have. I may add that it makes penning easy, words and expressions ready; after turnes [i.e., later occasions] will answer invention without

²⁰⁸ For what this would entail, see *supra* Introduction. Note that an understanding of the development of RN's thought hinges on dating his manuscripts, most of which are undated.

²⁰⁹ See f. 2 in RN, 'Præfanda' (UK:Lbl) Add MS 32526: ff. 1–2 (early period).

delay ... when the action of the pen is no disturbance, but rather an incentive to thinking.²¹⁰

Although the two practices need to be kept in mind when considering the state of North's surviving manuscripts and although I will have more to say about both later on, they cannot provide the sole explanation for his reluctance to publish more than a few works during his lifetime. It is possible, of course, that he may have circulated some of his writings in manuscript to select friends or relations.²¹¹ But there is little evidence that this happened with any frequency.²¹² It also is possible that writing sufficed to dispel loneliness and to attain self-fulfilment, so that he did not care whether anyone read his work. But this explanation is unsatisfactory because of his often expressed desire to benefit posterity.²¹³ North himself provides at least one explanation for not publishing—that since a person of his station may enjoy diversions but not profess them, those diversions should remain in the cabinet and not in the *hôtel de ville*.²¹⁴ But this explanation applies only to his writings on the barometer, perspective, building and music. For a different explanation seems required with regard to his writings having

²¹⁰ RN, 'Premise', *Cursory Notes of Musicke*, pp. iii–iv; see also ff. 88–88v in RN, 'Mechanick notes' (UK:Lbl) Add MS 32540: ff. 81–118v (early period).

²¹¹ Chan, 'From Essayist to Author', pp. 4 and 278 n.4, stated that 'perhaps' certain essays were circulated and 'apparently' intended for his wards; but she provided no hard evidence for this statement.

²¹² See, e.g., *infra* Chapter 3 sect. 3.1; see also NP 6, p. 58, and RN, *Cursory Notes of Musicke*, p. i, where the full title concludes: 'Intended for the incouragement of the study and performance of it [i.e., music], in the private family, into whose hands these papers may fall'; see also the 'Premise', *ibid.*, p. iii, which begins: 'By the formality of the following discours it should seem, as if it were intended to appear abroad, but the contrary ... being true....'

²¹³ See *infra* Chapter 2 sect. 2.2. There also is some evidence that he wrote his life of FN to benefit that brother's posterity, since the original manuscript seems to have been passed down through FN's line; see *infra* Appendix C: NORTH 1740.

²¹⁴ See *infra* RN, 'Of Etimology', ff. 8v–11, 17v; see also *infra* Chapter 3 sect. 3.2.

political or legal import²¹⁵—that by withholding these writings from publication, North might avoid prosecution for seditious libel.

This is not to say that North wrote libels, only that in factious times some of his writings might be interpreted as such. It is important to note, therefore, that following the end of the licensing system in 1695 and the Treason Trials Act of 1696, seditious libel was to become the principal instrument on which both Whig and Tory governments would rely for controlling the press. The result of this reliance was a doctrinal modification of the law of seditious libel, which Philip Hamburger has traced out in detail.²¹⁶ According to his account, the most rapid modification took place between 1696 and 1706, when John Holt was chief justice of the King's Bench.²¹⁷ His decisions, which 'either made the law more severe or limited the ability of juries to avoid convictions', define the problem for a critic like North, because

Under ... Holt's interpretation, it was criminal to assist in any way in the making, writing, or printing of a libel, *even without intention to publish it*; it was illegal to publish a libel, whether with or without knowledge of its contents; and it was punishable to libel the government as a whole, as well as one of its officers. Although juries interpreted irony and innuendo, judges decided whether the content of a writing was defamatory.²¹⁸

²¹⁵ E.g., RN, *Examen*, for which see *infra* Appendix C: NORTH 1740.

²¹⁶ Hamburger, 'The Development of the Law of Seditious Libel', pp. 714–58.

²¹⁷ He was chief justice from 1689 until his death in 1710. For brief mention of Holt, see RN, *Life/FN*, p. 152, and RN, *Notes of Me*, p. 188.

²¹⁸ Hamburger, 'The Development of the Law of Seditious Libel', pp. 752–3 (italics mine). Holt's rule that an indictment or information had to set forth either the defendant's actual words or the sense and substance thereof in Latin placed in the hands of the judges the question whether the content of the libel was defamatory; see *ibid.*, pp. 729, 734, 736–8. But the rule does not indicate what standard of evaluation a judge applied to determine whether the content of the libel was defamatory; and Hamburger provided no insight into this matter.

To avoid the threat of libel prosecutions, some authors refined not only irony and innuendo, but also satire.²¹⁹ And, as will become apparent, North also sought to cultivate these and other means of protecting himself.²²⁰ Indeed, Hamburger pointed out that it is ‘one of the minor curiosities of English literary and polemical history that the Crown’s dependence upon seditious libel law after 1696 to prosecute the press directly encouraged the use of irony and satire as common forms of literary expression’.²²¹

1.4. TECHNIQUES OF PROCREATION

Matters of style occupied North’s thoughts as early as his student days at Cambridge, when he ‘englisht Salust’s Cataline,’²²² with some essay of paraphrase, intending to season the style, which is in bare translation dull, with somewhat of English quickness’.²²³ But when North acted as midwife in bringing forth his brother Dudley’s *Discourses upon Trade*,²²⁴ he added a preface that marks his debut not only as an economic writer but also as a literary writer. For in that preface North provides a brief summary about the ‘Decorums’ of language—the style, choice of words and technique to be used in writing about the subject of trade. He rejects the technique of ‘Digesting’, that is, writing by means of ‘a great deal of Firsting, and Seconding’, for such a classificatory approach to writing, ‘without a

²¹⁹ See Hamburger, ‘The Development of the Law of Seditious Libel’, pp. 699, 701, 738–9, 749–50, 751, 753–4, 760. According to Knox, *The Word Irony and its Context*, p. 181, the ‘most significant development in the Augustan age was the elevation of irony to a place of importance to other ways of literary expression’.

²²⁰ See *infra* sect. 1.4; for some examples, e.g., of innuendo, see also *infra* RN, ‘Of Etimology’, ff.8–8v, 39 *et passim*.

²²¹ Hamburger, ‘The Development of the Law of Seditious Libel’, p. 738.

²²² I.e., *Bellum Catalinæ*; for Sallust, see *infra* RN, ‘Of Etimology’, f. 47.

²²³ RN, *Notes of Me*, p. 94.

²²⁴ For details, see *infra* Appendix B: [NORTH] 1691, i.e., 1692.

singular tallent, and much exercise, ... makes composing extreamly difficult'. He then states,

I do not understand why other Men, as well as Mountaigne, may not be indulged to ramble in Essays, provided the Sence fails not.

The Scalligerana, Pirroana, Pensees, and Mr. Selden's Table-talk,²²⁵ are all heaps of incoherent scraps; yet for the wit and spirit esteemed; therefore let that which is most valuable, Reason and Truth[,] be encouraged to come abroad, without imposing such chargeable Equipages upon it, whereby Writers are made to resemble Brewers Horses, very useful Animals, but arrant Drudges.²²⁶

Although North conceived 'Digesting' as dull drudgery, he himself resorts to a technique that might be described as somewhat classificatory, namely, common placing.

Ann Moss has traced both the rise and decline of common placing in an important book that provides insight into the use of this 'technology' for retrieving, recycling, recomposing and transposing accumulated material. That material—the constituents of commonplace-books—included emblems, allegories or parables ('similitudes'), examples from poets, historians or philosophers, and, most especially, pithy sayings such as adages, maxims or proverbs, sacred as well as secular. North had knowledge of this tradition from various sources,²²⁷ including from two writers who were already

²²⁵ I.e., words from the mouth of Joseph Justus Scaliger set down by his friends (the two parts first published together, 1669, 1671); words from the mouth of Pyrrho set down by Diogenes Laertius, *Pyrrhonis Eliensis philosophi vita* (1621); thoughts of Blaise Pascal written down on scraps of paper arranged and published posthumously by his executors (1670); and words from the mouth of John Selden collected by his amanuensis Richard Milward and published posthumously (1689).

²²⁶ [RN], 'The Preface', p. [A 5].

²²⁷ Moss, *Printed Commonplace-Books*, pp. 24–41, pointed out that the name 'commonplace-book' does not seem to occur before the sixteenth century but that during the middle ages 'the thing itself had been evolving' as *florilegia*. For reference to this older tradition, see RN, *General Preface*, p. 69, where he comments on 'the florilegists, or gatherers of remarkables'.

satirising it during the period of its decline. One of these writers was Michel de Montaigne—North's 'Mountaigne'—whose *Essais* include numerous excerpts mainly from Latin authors, a feature that points indubitably to the commonplace-book, even though Montaigne says he does not keep notebooks to store quotations from his reading.²²⁸ But, according to Moss, Montaigne also exploited other features of the commonplace-book:

...its appropriation ... of public texts to make a private book; its juxtaposition of contradictory quotations, with potential for play and for scepticism; its invitation to the knowing reader to refer back from the excerpt as logged to its original context and perhaps quite different connotations; its cross-references and its mobile quotations which can be shifted from place to place and start new trains of thought; its open-endedness, with room for ever more subject-heads and ever more illustrative material at any place within the growing book.²²⁹

Hence, Montaigne and the commonplace-book were partners in procreation.

Miguel de Cervantes, who escaped Moss's net, was the other writer who satirised the commonplace-book tradition during the period of its decline. For in the 'Prologue' to *Don Quixote* he tells the reader that his book will have 'no citations for the margins, no notes for the end' and no attributions for maxims from Scripture or from philosophers. Yet the book itself is stuffed with covert and sometimes overt quotations, as in the advice (described below) that Quixote gives to Sancho, where philosophic adages, proverbs and other constituents of commonplace-books form the content of the

²²⁸ According to Krailsheimer in Pascal, *Pensées*, pp. 23, 28, Montaigne's *Essais* provided Pascal with most of his classical quotations. Note also the range of meaning of the term '*pensée*': (a) thought, opinion, sentiment; (b) notion, idea, conception; (c) maxim, sentence; (d) meaning; (e) sketch, first draft; (f) pansy, heart's-ease.

²²⁹ Moss, *Printed Commonplace-Books*, p. 213.

advice and where Sancho is cautioned against stringing proverbs together in order to make sentences.²³⁰

While one part of the tradition of common placing was declining, another part continued in professions such as law,²³¹ since, as North himself indicates, the technique not only facilitated information retrieval but also the structuring of information. For it will often happen that ‘a man shall have a question of law stated, and remember that he has read some case or other very apposite to, if not the very question in point resolved, somewhere in the books, and if he would give all he is worth, he cannot recover where it is to be found’.²³² In the case of a raw student, however, North cautions against using ready-made common places, abridgments or indexes, because ‘it is of more use to recover a case to the memory when the judgment is ripe to esteem and value it, than it was at first to read and set it down’. Only with experience, then, will a student benefit from using other persons’ commonplace-books and most especially that of Matthew Hale conserved in Lincoln’s Inn Library, for, according to North, that may be ‘a pattern, *Instar omnium*’ (worth them all).²³³

²³⁰ This feature of Cervantes’ book seems to underpin RN’s ironical remark that ‘the *Spanish* Nation, reputed heretofore wise, have been famous for conducting even their State by Maxims, in which, perhaps, they (as Governors) have exceeded’; see RN, *Examen*, p. 353. In the earliest book of English proverbs, the compiler constructed a narrative by stringing proverbs together; see Heywood, *The Proverbs*. And in the seventeenth century, Samuel Butler has one of his ‘heroes’—Rapho, a parody of Sancho—speak in proverbs; see, e.g., Butler, *Hudibras*, Pt. II, canto ii, lines 501–506.

²³¹ See Holdsworth, *A History of English Law*, vol. 6, pp. 496–7, and Baker, *An Introduction*, pp. 184–6.

²³² RN, *A Discourse on the Study of the Laws*, pp. 25–8, p. 25.

²³³ I.e., ‘The Black Book of the New Law’, written in law French. According to Holdsworth, *A History of English Law*, vol. 6, p. 581, it consists of 502 folios, twenty of which are blank. Interspersed throughout are additional leaves containing fresh cases collected after the original had been completed; and although the cases under each head are numbered, there is no attempt at classification. According to Cromartie, *Sir Matthew Hale*, p. 119, there also is a volume of ‘Preparatory collections’, which form Hale’s additions to the abridgment of Henry Rolle, for which see Heward, *Matthew Hale*, pp. 150–51; see also *infra* Chapter 3 sect. 3.1, and RN, ‘Of Etimology’, f. 89.

How, then, does a student make a commonplace-book or alphabetical abridgment of case law? North's answer is that by 'essaying a common-place', a student learns how to make one. But he offers some advice towards that end. First, there is the 'furniture', namely, the purchase of a large paper book into which a set of titles are to be entered in a small but legible hand, so as to save room. Next, the titles are to be had either from some other commonplace-book or from a printed set of titles but not from 'methodists' who derive the subject matter from a few generals and make most of the titles by subdivision.²³⁴ Finally, there is the style of entering in the book, which requires learning 'to contract the sense of a case, point, or period' and then to enter it as a short 'note' or memorandum of the law or a summary of the book or the case. But, North warns, this style is not easily mastered without constant practice, whereby a student gains a habit not only of 'extracting the material part of a business' (i.e., case law) but also of abridging 'his pains in writing'.²³⁵

In transferring the technology of common placing to the production of a piece of writing, North sets up a book in a manner similar to that which he describes. But he neither uses the titles nor the alphabetical order of the lawyer's commonplace-book. Instead, he devises his own marginal or section headings which are rationally ordered according to the subject matter. The headings then serve as aids to North's memory by enabling him to retain the logical or temporal pattern to be pursued as the narrative or argument unfolds in writing. Of course, difficulties arise when he decides to alter an argument or to introduce new material, as one discovers, for example, in some of his writings on music by comparing his index of

²³⁴ FN did not 'over much criticize upon method, as some doe who use generall heads, and bring the rest under subdivisions. But he had many, even branches of others, alfabeted as generall heads; and sayd he found that way prompter for researches then the other'; see RN, *Life/FN*, p. 16. According to Holdsworth, *A History of English Law*, vol. 12, pp. 170–71, the alphabetical arrangement was to lead to the legal encyclopedia.

²³⁵ RN, *A Discourse on the Study of the Laws*, pp. 41–2. For 'contracting', see further *infra* Chapter 3 sect. 3.2, and RN, 'Of Etimology', ff. 24, 32, 33, 49v.

headings (if there is one) with the headings in the margins of his text.²³⁶

In general, North uses common placing as a technique for producing extended narratives or arguments not only in his writings on music but also in his life-writings, as well as in his 'second thoughts' about mechanics, physics and other domains of knowledge. He also resorts to one aspect of common placing—the technique of commonplace entry—when reflecting on specific problems, for example, in natural science, the solutions to which he wrote as separate notes or memoranda in notebooks.²³⁷ Some memoranda solve various problems in applied mathematics (e.g., mechanics) by using, for example, conic sections, whereas other memoranda report experiments or describe natural events such as meteors and gossamers—the latter, a particularly lovely essay concerning the web spun by small spiders on which they seem to float through the air in calm weather.²³⁸ And in some of his early writings North seeks to construct a 'system of nature' by deducing it from one or a few principles.²³⁹ But as he himself indicates, even though he made 'many offers ... to express what I thought I clearly knew', yet from all those 'paines' he had 'no other profit then a discovery, I did not understand so much, as I thought I did, and that my style (if it might be called such) was unnaturall[,] affected, and obscure'.²⁴⁰ As a consequence of this discovery, he resorted to the technology of

²³⁶ For some of the difficulties, see *NP* 3 and 5.

²³⁷ E.g., some of the contents in the sets of quarto notebooks bound together in (UK:Lbl) Add MSS 32548 and 32549.

²³⁸ In the collection of FN's memoranda on natural history, one records the opinions then current about gossamers; see RN, *Life/FN*, p. 258.

²³⁹ See, e.g., f. 81 in RN, 'Mechanick notes' (UK:Lbl) Add MS 32540: ff. 81–118v (early period), where the 'designe is to deduce a system of mechanical philosophy from the most indisputable principles and by the clearest steps that may be, for I find nature governed by a rule, that ... is uniform, and universal ... [and] reasonable, and according to our understandings necessary'. However, as will become apparent *infra* Chapter 2 sect. 2.3, RN is a seeker after truth (i.e., a sceptic), not a systematiser.

²⁴⁰ RN, *Notes of Me*, p. 96.

common placing by selecting and placing in a rational order memoranda concerning those problems to which he believed he had contributed an original solution.²⁴¹

North, however, seems to have been most at ease with a procreative technique that he calls 'essays', since the informal, even improvisatory style of this form of composition not only allowed him freedom from logical rigour but also enabled him to speak directly and personally to his imagined reader, who oftentimes was none other than himself.²⁴² Here is the significance of the passage quoted at the outset of this section in which North mentions Montaigne's *Essais* as a model. For, as Rosalie Colie has pointed out, the term 'essay' derived its literary currency in the Renaissance from Montaigne's 'brilliant choice of title to his collection of meditations and *pensées*' that were devoted chiefly to the subject of his inner life (although he did not completely exclude its outward circumstances).²⁴³ And in England, Francis Bacon extended the range of subjects possible in the essay to include, for example, building, gardens, plantations (i.e., colonies) and masques;²⁴⁴ and this extension, combined with his influence as a thinker, gave even greater currency to essay writing.²⁴⁵

²⁴¹ For the last such attempt, begun c.1726, see RN, 'Physica' (UK:Lbl) Add MS 32544: ff. 1–247 (late period). This manuscript, copied by MN (2) from one written earlier (UK:Nr), includes RN's pencilled corrections and marks but, unfortunately, lacks all the diagrams referred to in the text.

²⁴² For some brief remarks on writing *extempore*, i.e., running over a subject 'with an impetus of thought and fluent expression', see, e.g., RN, *Life/FN*, pp. 201, 324, 330, 393. For his declining to treat a 'subject in a formall way', see, e.g., RN, 'Cursory Notes of Building....', *Of Building*, p. 3. For a different method of speaking to oneself, see Randall, 'Mode and Voice', regarding the meditative verse that DN (2) called 'imperfect essays'.

²⁴³ Colie, 'The Essayist in his *Essay*', p. 237.

²⁴⁴ Bacon, *The Essays*, pp. 9–190, where Montaigne is mentioned in the first essay only. Although the title of Bacon's collection identifies the contents as essays, some of his other writings may be considered as such, even though they are not so named or titled.

²⁴⁵ Note, however, that Bacon's tone is distinctly different from that of Montaigne, a difference ignored by Chan, 'From Essayist to Author'.

Like the two essayists just mentioned, North uses the term 'essay' to denote a test, proof, weighing or assay of some subject of thought; but the nature of his essays depends on the literary forms in which the explorations of his 'second thoughts' take place. Indeed, the techniques involved in essay writing and common placing are not mutually exclusive, for the memoranda entered under each sub-heading in a commonplace-book or in a work modelled on such a book can themselves constitute a brief essay. Of North's short essays that are self-contained, a number are merely drafts of a piece of writing, of which two examples may be mentioned, both incomplete. One has the title 'Essay',²⁴⁶ which was written about the same time and with the same approach as the essays mentioned in the next paragraph. The other has the title 'Religion 1.', in which North specifically states that within 'the scope of this essay ... nothing shall be dogmaticall, but submissive to learned correction'.²⁴⁷ As drafts, these two examples may be regarded as preparatory explorations that he either discarded or that he set aside for revision or for further contemplation.

A number of self-contained essays take the form of short moral lessons concerning human manners—external conduct or behaviour, somewhat like those in Bacon's *Essayes or Counsels, Civil and Moral*.²⁴⁸ North's topics include, but are not limited to pride, affectation, dressing,²⁴⁹ selling and 'pedantism'. But clear criteria would have to be established before identifying other pieces of writing as moral lessons, since, for example, the topic, 'prejudice', which might seem to fall into that category, is concerned with ways to dislodge this common enemy of knowledge and, hence, might now be classed as epistemological. Regarding the essays that can be classed as moral lessons, some are complete but not polished; others

²⁴⁶ RN, 'Essay' (UK:Lbl) Add MS 32526: ff. 90–95v (early period).

²⁴⁷ See f. 124 in RN, 'Religion 1.' (UK:Lbl) Add MS 32526: ff. 124–125v (early period).

²⁴⁸ RN's father, DN (2), owned a 1629 edition of this book; see Randall, *Gentle Flame*, pp. 84 n.61, 187, 207.

²⁴⁹ The essay on dressing includes a reference to Bacon, 'Of Ceremonies and Respects', *The Essays*, pp. 162–4.

are incomplete; and some exist in more than one version. From their state and tone of voice, it seems that North was experimenting with a formal style of writing that proved uncongenial.

But he did not give up the moral lesson altogether, for he incorporated it into his longer writings by contracting it, aphoristically, into a sentence or two.²⁵⁰ And he translated from the French a set of essays attributed to Pierre de Villiers, some of which cover a number of the same topics that he himself had attempted to treat.²⁵¹ What North valued in that set of essays is clear from his preface to the translation, where he describes Villiers' work as a 'Satyr on the Vices and Infirmities regnant', and the author's morality as 'exact, and of a sort not ordinary, consisting in Discoveries of Folly, and rendring Vice and Vanity contemptible'. But North was not entirely satisfied with Villiers' style—it was too sententious. Hence, he thought, 'It were well if some exquisite Pen, would vndertake the Vices of our Age, and Nation, in a method like to this, which seems the most efficacious of any'. (Bernard Mandeville's 'exquisite Pen' at once comes to mind.)

As part of his own efforts 'to court' a style, North sought to add satire to his resources as a writer, while recognising the wisdom of Horace's dictum that in composing satire,²⁵² a writer cannot be content to use 'merely the plain, unadorned language of everyday speech'; rather, his aim should be to achieve a style 'that employs *no unfamiliar diction*', though he will 'sweat tears of blood in his efforts and still not manage it—such is the power of words that are used in the right places and in the right relationships, and such the grace that they can add to the commonplace when so used'.²⁵³ And as North

²⁵⁰ See, e.g., RN, *General Preface*, p. 55, and RN, *Life/FN*, pp. 25, 36, 69, 96, 181, 188–9, 190, 194, 196, 213, 426, 430, 437, 440, 452, 460.

²⁵¹ See *infra* Appendix B: [NORTH (tr.)] 1701.

²⁵² I.e., satiric drama, that is, a comedy added to a tragedy. These *satiræ* (medleys) were treated as moral writings by Christian humanists, who frequently edited them under the title *sermones* (talks), although Horace himself also called them by that name.

²⁵³ Horace, 'On the Art of Poetry', p. 87 (*italics mine*). In a letter dated 22 December 1706, RN, 'Letters', p. 254, states: 'I can make a shift with Horace

himself points out, 'when the sparkling with sentences is too affected, they start forth, and are distinguished from the text, which is to their disadvantage', whereas 'if the riches of observation lie concealed or couched in the style, they follow (as they say) naturally'. But this 'perfection', which is 'not given to all', is 'much easier showed than executed'.²⁵⁴

Although North's techniques of procreation await detailed study, two techniques deserve particular mention before concluding this subject. One is his use of masks, the other, his realism. Regarding the former, Mary Chan is possibly the first critic to recognise that North adopts a mask, when she argued that, initially, his chief motivation in writing the life of his brother Francis was to answer certain words of writers who had disparaged that brother's reputation and character but that afterwards in the final of six versions he changed his stance from 'champion' to 'disinterested' spectator.²⁵⁵ But her argument is problematic, because even in the final version, North canvasses some of the works that he believed slandered his brother's reputation.²⁵⁶ And since Francis was dead when North wrote all six versions, there was no remedy for this at common law, because emphasis in defamation was 'on the kind of damage suffered rather than on the kind of words spoken'.²⁵⁷ Hence, North had to counteract the libels by delineating, and providing evidence for the 'morall genius and character' of Francis, his reasonableness, the one constant in North's masterly depiction of his brother's life as a voyage through troubled seas.²⁵⁸

To convince readers of the truthfulness of his portrait, North presents himself as a character who plays not one but a number of

without any comments'. For some of the editions of Horace RN once owned, see RN Books (1); for remarks on Horace, see also RN, *Of Building*, pp. 15, 112; RN, *Cursory Notes of Musicke*, p. 144; RN, *The Musicall Grammarian 1728*, p. 241; and *infra* RN, 'Of Etimology', f. 30v.

²⁵⁴ RN, *General Preface*, p. 71.

²⁵⁵ Chan in RN, *Life/FN*, p. xxxiii.

²⁵⁶ RN, *Life/FN*, pp. 7–10 *et passim*.

²⁵⁷ Baker, *An Introduction*, p. 443.

²⁵⁸ For the metaphor, see RN, *Life/FN*, pp. 15, 212 *et passim*.

different roles—as an eye or ear witness of matters of fact or matters of record;²⁵⁹ as a juror to decide questions of fact concerning events no longer present;²⁶⁰ and perhaps also, though rarely, as a lawyer pleading a case or as a judge deciding either witness competency or questions of law by declaring principles from ‘cases or precedents’. In short, North uses masks drawn from his own experience in the courts of common law,²⁶¹ an experience in which

...contending, partial, and interested parties, with the help of contending lawyer advocates, could reach the truth, of particular facts, or rather that judge and jury could reach it for them. Counsel were expected to use the available means to win their case, but what means were available was determined by legal rules.²⁶²

The courtroom drama was dependent on testimony, so that importance was given to witnessing, rejection of hearsay (second-hand testimony), criteria for evaluating witnesses and concern for the degree of certainty to be attributed to witnessed matters of fact. At the same time, the common law attempted to reduce or eliminate partiality and bias in witnesses, jurors and judges, while assuming partiality in the litigating parties and their lawyers.

North’s use of masks, then, provided him with multiple voices for expressing the real subject of his writings—experience and his responses to it. But he also reveals another reason for using them in an unfinished preface, drafted about 1696 or a little later. For after concluding ‘the account I intended to give of my self’, he remarks: ‘I ... crave leav to wear my mask and so hold my counte[nance] indemnified’.²⁶³ Here, perhaps, is evidence that North was already

²⁵⁹ See RN, *Life/FN*, pp. 7–9, 14–15, 21, 25, 29, 31–3, 39, 50, 53, 58–9, 99, 106–7, 109, 120, 127, 132–4 *et passim*.

²⁶⁰ See RN, *Life/FN*, pp. 7–8, 76, 87, 107, 115, 123, 130 *et passim*.

²⁶¹ See Appendix B: [NORTH] 1698, where his mask is that of a ‘Gentleman of the Long Robe’, the long robe being the dress that betokens the legal profession.

²⁶² Shapiro, *A Culture of Fact*, p. 210.

²⁶³ See f. 4v in RN, ‘Preface’ (UK:Lbl) Add MS 32545: ff. 2–6v (early period).

aware of Holt's judicial opinions, mentioned previously, which from 1696 enabled both Whig and Tory governments to resort to the law of seditious libel so as to control the press. Indeed, about 1726 or a little later North recurs to the need for various means of protection against injury or damages, one of which is a 'felicity' that his brother Francis had 'acquired by care, and long practise', so as to express himself in political writings—'that whither he spoke to freind or foe, his words had allwais an innocuous sence, and however his meaning might be guessed at, his language never betrayed him'. For 'tho his reflections were of the actions and persons in his owne time, his expressions were of such an universall nature, that no matter, or person in particular might own them'. The lesson to be drawn, according to North, is that this practice of indemnifying oneself is

...an art worthy to be practised in all times, and I am sure it was usefull in this [time] when trappans [i.e., snares] flew about so buisily; and if men doe not accustome themselves to use it with freinds with whom they are safe, they will at one time or other, by ardor or unthinkingness, blurt out somewhat they would have had silent, therefore it ought to be made habituall and work without thinking.²⁶⁴

The second procreative technique that deserves particular mention is North's realism. This is not to be confused with his philosophical realism, about which I shall have something to say later on, for in the context of techniques of procreation North's realism is to be understood in two main senses.²⁶⁵ On the one hand, it has an empirical meaning as factual, the truth that our senses give us. This kind of realism is best exemplified in North's writings on natural history and natural science, but it is not restricted to those

²⁶⁴ RN, *Life/FN*, p. 80. Perhaps the need, or perceived need to protect himself accounts for RN's tendency, at least in some writings, to avoid naming persons still living, although, undoubtedly, there were conventions to be followed in this matter; see, e.g., *infra* RN, 'Of Etimology', f. 9v.

²⁶⁵ Millard in RN, *General Preface*, p. 20, focused only on what he termed 'realistic didacticism'; but he also pointed out that like the novelist Henry Fielding, RN 'seemed to feel the urge towards a new realism, involving characters in situations recognizably like those of the average reader'.

subjects. On the other hand, it has a literary meaning as imaginative, an inventive creation clothed in the familiar and everyday. This kind of realism is best exemplified in North's life-writings, but it is not restricted to them. Indeed, he employs both kinds of realism in a number of his writings on different domains of knowledge, including, for example, his writings on music.

It should not be inferred, then, that North's realism has been shaped by the subject matter of his writings, as will be apparent from a memorandum in his autobiography concerning the regimen of health that he devised for himself. As he explains to the reader, his regimen was directed chiefly to his stomach because of 'a disposition perpetually to eruct'.

This I strove so much in when I was alone, thinking if I could rais the wind (as it seemed to be) I should be well. And by a perpetuall straining to eruct, I have fixed on my self an eructation, which is but a convulsion of the esofagus, which I shall never quite wear off, and was plainely at first derived from this error of conduct. But it grows less, and I hope will become inconsiderable or nothing. It is with many, as I found it to be with me, that a disorder of convulsive motion of the fibres of the stomack or mouth of it, is believd to be wind, and medicins goe accordingly ... whereas it is not so, but plaine convulsion.²⁶⁶

On one level, readers are given a factual account of the way in which North acquired a bad habit or 'error of conduct'.²⁶⁷ As the phrase 'error of conduct' suggests, a moral lesson is implied; but the lesson is not imposed but offered as the result of North's own experience. On another level, however, readers are given an invention inspired by a passage in the previously mentioned book by Cervantes' *Don Quixote*, a passage that exemplifies the difficulty of getting rid of a bad habit once it has been acquired.

²⁶⁶ RN, *Notes of Me*, p. 202.

²⁶⁷ For the irony involved in RN's 'folly', see Kassler, *Inner Music*, pp. 192–6.

The passage occurs in the second part of the book,²⁶⁸ where Quixote offers some advice to Sancho, his peasant companion who is about to embark on a new career as governor of an island. Initially, the advice concerns high matters as fear God, know yourself and other such philosophical adages before moving to low matters as ‘the workshop of the stomach’, where the health of the entire body is forged. As part of his counsel on this matter, Quixote cautions Sancho not ‘to eruct in front of anyone’. Sancho replies that he does not know what the word ‘eruct’ means. Quixote explains that eruct is a synonym for belch; but as this is an impolite term, Sancho should say ‘eruct’ and ‘eructations’, not ‘belch’ and ‘belchings’. Indeed, Quixote points out, even if ‘someone fails to understand these terms, it makes little difference; [because] in the course of time they will come to be readily understood and thus the language will be enriched, for it is determined by popular usage’.²⁶⁹ Sancho then promises ‘not to belch; for I do it very often’, so Quixote has to remind him that the appropriate term is ‘eruct’, not ‘belch’. Whence Sancho promises he will use the word ‘eruct’ from now on.

The realism in *Don Quixote*, which is based on a verisimilitude to human nature, accounts, perhaps, for the book being described as the first modern novel.²⁷⁰ And since a large group of North’s writings contain depictions of different characters in the drama of life, it is probable that he learned more than one lesson from reading Cervantes’ book.²⁷¹ For example, in his critical reflections on the subject of life-writing, he considers ‘the old romances’,²⁷² including

²⁶⁸ I.e., Part II, Chapters xlii–xliii (the quotations that follow are taken from the end of the latter chapter). The first Spanish edition was published in 1604; the first English translation, issued in 1612, consisted of Part I only. Subsequently, there were numerous editions, translations, abridgments and adaptations.

²⁶⁹ Precisely RN’s point of view; see *infra* Chapter 3.

²⁷⁰ See, e.g., Putnam, *The Portable Cervantes*, p. 19.

²⁷¹ To the best of my knowledge, the only explicit mention of Cervantes and his ‘romance’, *Don Quixote*, occurs in RN, *General Preface*, pp. 51, 67.

²⁷² RN, *General Preface*, pp. 67–8. See also f. 61 in RN, ‘An essay of musically ayre....’ (UK:Lbl) Add MS 32536: ff. 1–90v, where he records that as a youth, he ‘read old romances, and was extremely taken with the ultra natural feats of Amadis

the customs in *Don Quixote* that prevailed from the ninth century 'for divers ages'. During this period the 'gothic' spirit of fighting was called 'honour', and 'the noble virtues of relentless courage, rigorous fidelity, truth, and justice' were the foundation of that spirit. And if any man 'then styled of honour' was 'impeached in any of these articles, mortal battle ensued, which was their way of proving or disproving matters of fact, and of convicting crimes or purging innocence'. Even though the author represented the characters in *Don Quixote* as a 'gallimaufry' or miscellaneous bunch, yet he also elevated the virtues of 'honour, truth, and justice to the highest pitch of praise and commendation'. Hence, it would be 'reasonable to think that from hence the humour of honour was exaggerated' and that 'since their rodomontade profession of scrupulous honour hath been so ridiculed (as in Cervantes)', the Spanish people abated the 'rigours' in the ancient method of proof, trial by battle.²⁷³

North seems to imply that by using an exaggerated realism, an author might effect a change in customs for the better. But did Cervantes really effect such a change? The custom at issue was a ritualistic process of divine intervention by ordeals, which were methods of proving or disproving matters of fact, using 'trials' by fire, water and from the eleventh century, single combat ('battle'). If the 'rigours' in these methods were abated, how were they abated? North does not say. However, might an English reader infer that the change in custom was from trial by battle to trial by jury, a procedure used in England that required methods of fact determination comprehensible to litigants and to the culture as a whole?²⁷⁴

These questions have bearing on North's realism, a study of which would need to take account of the changing meaning of 'fact' and 'matter of fact'. For according to Barbara Shapiro, these

and Don Galaor', knight-errants and brothers in the chivalric romance, *Amadis of Gaul*, who also were mentioned in its parody, *Don Quixote* (see Part I, ch. xviii).

²⁷³ RN, *General Preface*, p. 67.

²⁷⁴ Note that trial by battle was not a trial in the modern sense of the word—it was not rational adjudication upon evidence. But when the jury superseded that and other older methods of proof, 'when pleas began to be recorded, and writing became more general', there were 'some indications of the beginning of a law of evidence'; see Holdsworth, *A History of English Law*, vol. 9, pp. 130–33.

concepts originated in the common law,²⁷⁵ which, in turn, provided a 'ready-made technology' for the 'discourses of fact' in history, natural science, topography, even some fiction and not excluding life-writing.

²⁷⁵ In Shapiro, *Probability and Certainty*, the legal origin of these concepts was rather muddy; but it is fully clarified in Shapiro, *A Culture of Fact*. Note, however, that there were a number of meanings of the word 'fact', some of which are now obsolete but were still in living use during RN's day, e.g., deeds (as opposed to words) and crime (evil deed).



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HOW TO LIVE INDEPENDENTLY

2.1. LEARNING FROM ONE'S OWN CASE

One of the most artful of North's writings (or so it seems to me) is the incomplete or, perhaps, uncompleted autobiography, *Notes of Me*,¹ which ends abruptly with an account of the practices used in executing the Lely trust.² Constructed as a series of essays, like memoranda noted in a commonplace-book,³ the autobiography tells the story of the author's ripening from the period of raw youth to about the middle of his third decade, a period in which he gradually discovers how to live without being guided by external authority. This had been a central theme in Montaigne's *Essais*,⁴ which contain memorable apothegms about the human condition and how to live. Indeed, according to J. B. Schneewind, Montaigne was not merely an essayist but also a moralist who was

...the first to explore fully the consequences for daily life of the loss of publicly acknowledged moral authority in a religiously divided world. If he exposed the inadequacies of

¹ It is possible that RN did not complete what he had begun; but there also is evidence that parts of the manuscript may have been lost, perhaps during the dispersal of his manuscripts; see RN, *Notes of Me*, pp. 142, 178, 230, 241, and Millard in *ibid.*, pp. 57–60.

² RN, *Notes of Me*, pp. 237–52; for the period in which these practices were implemented (1682–94), see Delthloff, 'The Executors' Account Book'.

³ I.e., as revealed in RN's index of section heads, *Notes of Me*, pp. 77–8, but which, unfortunately, Millard, p. 65, has not used for text division.

⁴ According to Randall, *Gentle Flame*, p. 13, about 1602 DN (1) made a study of Montaigne's *Essais*; and this seemed to have 'deepened and darkened' the melancholy that became 'a dominant factor in his life and, perforce, in the lives of those who lived with him', including, DN (2) and, for a time, RN.

the European inheritance of practical wisdom, he also articulated the questions that the new European situation made unavoidable and began to explore possible answers.⁵

Nevertheless, Montaigne's thinking reveals certain tensions that arise from his conservative and sceptical cast of mind. On the one hand, he was what now is called a 'fideist', that is, in matters of faith, he held that moral truth is derived by traditional instruction from an initial divine revelation. He also thought that, if there is hope for civil peace, each man should obey the laws and customs of his country even if they are unjust. On the other hand, he reminded his readers of the fallibility of the senses and imagination, as well as the weakness of memory and the uncertainty of judgment. And because he observed such a variation in opinion and customs, he was unable to find doctrines about right and wrong, or about how to live, that are universally accepted.

As Schneewind has argued, Montaigne was not satisfied with this sceptical result.⁶ Hence, he asked repeatedly what he could learn about how to live, when this question must be answered without supernatural aid or without any other guidance outside of ourselves. He gradually came to the answer that by portraying himself honestly over a whole lifetime, he could discover his own deepest convictions. That is, he could discover a ruling pattern within himself. Although this ruling pattern holds only for himself—for his own nature and experience—he also thought it might be useful as a model for others. What he presents, then, is a practical method of ethics, according to which he finds, after reflection, whether his own enduring response

⁵ Schneewind, *The Invention of Autonomy*, pp. 44–5, to whom I am indebted for his illuminating treatment of this moralist, pp. 44–57, 523–4 *et passim*. For Montaigne's importance in the revival of ancient scepticism, see also Popkin, *The History of Scepticism*, pp. 44–57 *et passim*.

⁶ Schneewind, *The Invention of Autonomy*, pp. 42–4, described Montaigne's scepticism as Pyrrhonist, i.e., as deriving from the ancient sceptic Pyrrho. And Popkin, *The History of Scepticism*, p. 55, described Montaigne as having 'worked out' a 'complete Pyrrhonism'. But see Leyden, *Seventeenth-Century Metaphysics*, pp. 71–86, who pointed out that Montaigne had more than one source for his scepticism, which also differed in a number of ways from ancient Pyrrhonism.

is acceptance or rejection. The enduring or consistent pattern of these responses then provides Montaigne with all the guidance that he needs, with the result that morality, for him, is a morality of self-governance, not a morality of obedience.⁷

Although North's *Notes of Me* has been available in a bowdlerised edition since the end of the nineteenth century⁸ and more recently in a complete edition, there has been no study of North's indebtedness to Montaigne. As a result, a number of critics (myself included) believed North's lament that because of an illness, he was left with an 'incurable confusion' in thinking that affected both his speaking and his writing.⁹ But a more attentive reading indicates that North's stress on a defect of his 'memory, or rather judgment' is one of the sceptical ploys that Montaigne himself had used. And like Montaigne, North offers practical advice on how to live with such a defect, for he writes:

It is an happyness I have admired and envyed, that some will speak or write, and at the same time be contriving forewards, to compose what is to succeed in forme, and beating about for new matter, till there is a full perswasion nothing considerable is omitted, and not be disturbed, but persue the method proposed, as if a discours were premeditated. So also to have such quickness of thought; that no sooner is an objection started, and understood, but a true, or for want of that, a witty answer is uttered. These are felicitys to be admired and essayed, but not to be acquired, being the produ[c]e of naturall strength improved by the practice of the mind, and its performances. And by how much, I have understood this in others, I have so bin conscious of my owne wants, but borne it with the best patience I could muster, and strove in my way to

⁷ For Schneewind, *The Invention of Autonomy*, p. 45, Montaigne's moral scepticism is the starting point for modern moral philosophy, which has been concerned with 'Montaigne's questions ever since he asked them'.

⁸ See *infra* Appendix C: NORTH 1887.

⁹ RN, *Notes of Me*, pp. 96–9. For some other critics who believed RN's claim, see Clifford, 'Roger North and the Art of Biography', p. 285; Schwoerer, 'Roger North and his Notes on Legal Education', pp. 327–8; and Grassby, *The English Gentleman in Trade*, p. 252.

make the best of my part, and be contented with the success,
that would follow.¹⁰

Like Montaigne, North also describes his responses to experiences such as illness, pleasures, reading ('study') and professional offices or duties ('business'). And in one memorandum about his own experience in, and rejection of public life, he indicates that his 'second thoughts' led him to accept that, at least for him, 'there is no condition like the private' and that 'it is enough if I can governe my private economy'.¹¹

The theme of self-governance recurs throughout North's autobiography. For example, in describing a 'cruell fitt of sickness' that he had when young, he concludes that since 'the mind cannot work without the action of the body', it is important to have 'those facultys so farr as to know, and enjoy what is good, and not be so driven by them, as to precipitate into diseases, troubles, and cares, such as are well knowne to attend those, who are not able to governe those emotions of the body'.¹² But the most important recurrence follows from North's memorandum regarding his 'regiment or rather no regiment of health',¹³ about which he 'never was perfectly at eas till I had fixt in my mind, 2 grand points of philosophy'. These were, first, that 'labour and paines was not an evil, beyond the necessity wee have of enduring', since 'life it self', even 'the greatest eas of it', is 'actuell paine'; and second, that 'it is in all cases and circumstances, better to dy[e] then to live', for it is only weakness and infirmity 'that makes us desire to live'.¹⁴

¹⁰ RN, *Notes of Me*, p. 98.

¹¹ RN, *Notes of Me*, pp. 222–3.

¹² RN, *Notes of Me*, p. 97 (where, unfortunately, in the paragraph from which this quotation is taken, the word 'sagacious' has been printed as 'salacious'). See also *infra* Appendix B: [NORTH] 1713, regarding life as a 'perpetual Disease', i.e., a disease or 'Sence of our innate Misery'.

¹³ RN, *Notes of Me*, pp. 206–7.

¹⁴ RN, *Notes of Me*, p. 206, who here gives voice to one of many Stoic themes that run through his work, a feature that also occurs in Montaigne's *Essais*. In some

His weighing of these two points leads naturally to the subject of suicide and the ‘grand controversie whether it be lawfull for a man to shorten his life, in a desperate case or not’,¹⁵ a controversy that emerged as Stoic and Epicurean teaching became more widely available. For according to that teaching, self-murder is lawful under certain conditions.¹⁶ During the latter part of the sixteenth century, Stoic teaching was widely disseminated by the critics, Guillaume du Vair and Joest Lips, both of whom Christianised Stoicism.¹⁷ Then, during the seventeenth century the same service was provided for Epicurean teaching by Pierre Gassendi.¹⁸ In both cases, however, Christianising pagan texts meant presenting the original teachings and then either modifying them towards orthodoxy or stressing ‘the rational man’s self-respect nourished by literature and old philosophy in opposition to religious authoritarianism’.¹⁹ Hence, as Montaigne pointed out, the teaching that suicide is lawful in certain cases

...goeth not without some contradiction: For many are of opinion, that without the expresse commandment of him that hath placed us in this world, we may by no meanes forsake the garrison of it, and that it is in the hands of God only, who therein hath placed us, not for our selves alone, but for his

previous writings, I gave too much weight to this feature by treating RN as a neo-Stoic.

¹⁵ See RN, *Notes of Me*, pp. 207–10; see also f. 125 in RN, ‘Religion 1.’ (UK:Lbl) Add MS 32549: ff. 124–125v (early period), where he writes of suicide that ‘men judg too severely of it, in reputed it cannot be lawfull in any case’.

¹⁶ This Stoic teaching, according to Pembroke, ‘Oikeiōsis’, p. 132, was a consequence of deriving morality from self-preservation. But note that even though Hobbes, Pufendorf and Locke derived their natural-law morality from self-preservation, they prohibited suicide; see Hobbes, *Leviathan*, p. 189; Pufendorf, *De officio hominis et civis*, p. 29 (those who ‘throw away their own lives’ are ‘certainly to be thought sinners against the natural law’); and Locke, *Two Treatises of Government*, p. 298.

¹⁷ See Schneewind, *The Invention of Autonomy*, p. 170.

¹⁸ For the work of Gassendi and his influence in England, see Jones, *The Epicurean Tradition*, pp. 166–213.

¹⁹ Sprott, *The English Debate on Suicide*, p. 78. For an example of these strategies, see Jones, *The Epicurean Tradition*, pp. 202–3.

glory, and others service, when ever it shall please him to discharge us hence, and not for us to take leave. That we are not borne for our selves, but for our Countrie: The Lawes for their owne interest require an accompt at our hands for our selves, and have a just action of murther against us. Else as forsakers of our owne charge, we are punished in the other world.²⁰

The prohibitions, then, were both religious and legal, whereby self-murder was regarded either as a sin or as a crime.²¹ North, however, considers the religious prohibition only, which in the Church of England was grounded on a Scriptural prohibition extracted from the commandment 'Thou shalt not kill', and then justified by recourse to Thomist philosophy²² as contrary not only to Providence but also to the principles of universal reason (analogy) and natural law that dictate self-preservation. In considering the ground of the religious prohibition, North points out that 'Thou shalt not kill' is one of the commands in the Decalogue.²³ But, he continues, 'the decalogue ... was a law onely to the Jewish nation, and not to the whole world, and if this article [thou shalt not kill] were apposite, it extended not to us, no more then that of the sabaoth

²⁰ Montaigne, 'A Custome of the Ile of Cea', *The Essayes*, pp. 174–81, pp. 174–5. His own opinion is hinted at in Montaigne, 'Of Age', *ibid.*, pp. 162–4. A lengthy survey of the controversy was undertaken by Montaigne's follower and adopted son, Pierre Charron; see Charron, *Of Wisdom*, vol. 2, pp. 293 *et seq.* Note that RN Books (1) includes a copy of the 1697 translation by George Stanhope, who was against suicide and who injected his opinions not only in an appendix but also (in the guise of Charron) in the text itself; see Sprott, *The English Debate on Suicide*, pp. 82–3.

²¹ As a crime, according to Baker, *An Introduction*, p. 523, suicide was classed as a felony in which mental guilt was a 'necessary prerequisite of criminal punishment'. Although this teaching derived from Augustine and canon law, most reported discussions of *felonia de se* concerned 'not so much specific states of mind as the defendant's capacity to form a malicious intent'.

²² I.e., the philosophy of Thomas Aquinas (*infra* sect. 2.4), which Richard Hooker reinterpreted in 1594 in order to conform it with Anglican Protestantism; see McAdoo, *The Spirit of Anglicanism*, pp. 5–10 *et passim*, and Schneewind, *The Invention of Autonomy*, pp. 58–9, 64, 102–3, 142–3, 183, 194, 306 n.38, 388, 511.

²³ Exodus xx.13.

doth, farther then the morality of it'; and 'if it did extend to us, it is not against self-killing, becaus it regards our neighbour ... and so toucheth not our owne case'.²⁴ Hence, he concludes that there is no positive command against self-murder.²⁵

In considering the reasons commonly adduced for obeying the command, North responds to some unnamed opponents who give sole weight to the Gospel's first commandment, 'Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind'.²⁶ For they derive from this commandment three rules that oblige us (1) to submit freely to God's will whatever that may be; (2) to accept whatever befalls us as good because it comes from him; and (3) to do as much good as we can but seek nothing for ourself. Consequently, self-murder is irreconcilable with the three rules that require submission to God's will with Christian resignation and with public and personal duties.

Regarding the first two rules, North agrees that 'wee must submitt to Providence' and that we must 'bear all that God thincks fitt to lay upon us'.²⁷ But he points out that resigned submission does not prevent us from using 'the most rationall and innocent means for releif' not only in the 'case of life' but also from 'other cases that touch our well being, or the contrary'. For 'the same Providence that sends the diseas sends the expedient', and there are 'remedys in many cases layd before us, and it is not onely lawfull to use them,

²⁴ RN, *Notes of Me*, p. 208.

²⁵ Cf. Selden, 'Notes', pp. 15–18; see also Selden, *Table Talk*, p. 56: 'God at first gave Laws to all Mankind, but afterwards he gave peculiar Laws to the *Jews*, which they were only to observe. Just as we have the Comon Law for all *England*'. See also Cromartie, *Sir Matthew Hale*, p. 44 (quoting from an unpublished manuscript of Hale): 'the laws of the *Jews* are not our laws, and so the constitutions of other realms [are not our laws]'.

²⁶ Mark xii.30; see also Deuteronomy vi.5.

²⁷ The quotations in this and the following paragraph are from RN, *Notes of Me*, pp. 208–10.

but folly or sin not to doe it'.²⁸ As for the third rule, North accepts as a general maxim that 'everyone is bound to doe as much good as they can',²⁹ but he disallows the rule if taken more extensively as a duty, the breach whereof is sin.³⁰ Moreover, he points out that doing good 'takes in oursellves, with the custody of whome wee are intrusted', so that 'we are bound to do ourselves good before any other'. And by recourse to the proverbial, but misunderstood expression, 'charity begins at home',³¹ he reminds his opponents of the Gospel's second commandment, 'Thou shalt love thy neighbour as thyself'.³²

North finds his opponents' rule-centred morality impossibly rigorous,³³ enough 'to make mankind madd', since it requires what is completely impracticable, namely, constant deliberation and 'weighing scruples of good and evil', even though 'it is scarce possible to have a criterium of good and evil, so as to give one a

²⁸ Cf. RN, 'Cursory Notes of Building....', *Of Building*, p. 6: 'lawfull pleasures are the guift of heaven, intended as expedients to releive the meer pains of life, which at best is bitter enough, and it is enthusiasme and madness to decline them'.

²⁹ According to RN, *Notes of Me*, p. 209, 'some' say that to do good to others, we must endure suffering; and 'the more wee endure, the stronger the force of the example is'. Note that 'some' could have included Pufendorf, *De officio hominis et civis*, p. 29, who asserted that 'pains ... bravely endured [are] a helpful example to others'.

³⁰ For a similar argument on a different topic, see f. 38 in RN, 'A perswasion touching the oaths. 30. Ap. 1696. In a letter' (UK:Lbl) Add MS 32524: ff. 29v–43: 'It is true wee ow[e] to God, all the good wee can doe, but the means are such, as the circumstances wee live in permit.'

³¹ According to Charron, *Of Wisdom*, vol. 2, p. 483, 'the Love and Duty we owe to our selves is laid as the Ground-work upon which that to our Neighbour is superstructed, and the Model by which it is to be proportion'd. For, as the old *Hebrews* [i.e., Leviticus xix.18], and not They only, but all the World ... say, *charity begins at home*'.

³² Mark xii.31.

³³ This is more clearly stated at f. 121v in RN, 'Reason' (UK:Lbl) Add MS 32526: ff. 120–123v (middle period): 'The high notions of eternal transcendental characters of good and evil ... which [are] ... *prior, and extra to* all other laws and rules of duty upon earth whatsoever, are meer chimeras, grounded upon no reason, authority, or truth' (italics mine).

reasonable satisfaction in the comparison of things'. Since rules cannot authorise, why not use the 'comon laws that God hath given to the world to governe ordinarily',³⁴ as also our 'sences to observe, memory, and the art of reasoning, which enables us to determine our will in the use of them accordingly'? Indeed, what 'special law or Providence is there which forbids us to use our reason, in making ourselves happy without injury or malice to any, as when wee are our owne governors, and proprietors, to determine desperate pains, and torture, by means inoffensive to all'?

Here, then, is the gold in North's assay, for in it he voices a concern with determining his own will to the good.³⁵ Although freedom of choice and action seems to be the point of his critical reflections on suicide, there is little doubt that those reflections were prompted by events between 1685 and 1691, the period of the great 'crisis' or turning point in his life.³⁶ And if at some point during this time he did seriously consider ending his life, then his 'second thoughts' concerning the suicide controversy led him to a different conclusion about such a 'great and consequentiall matter',

...not so farr as to make any resolutions, but onely that I might not be putt to deliberate when my reason is not capable. *And so as I may determine freely in all emergencys to doe as the present occasion shall require.* And if I never act otherwise then those who are of the contrary opinion, as I beleieve I shall not, yet I have this advantage, that I have eas and repose in my

³⁴ RN's phrase 'comon laws' presents an interpretive problem—from the point of view of natural science, secondary causes (physical laws); from the point of view of legal science, the unique *nomos* or customary law of each society (in England, the common law). For evidence that the latter is intended, see *infra* Chapter 2 sect. 2.4.

³⁵ Concerning the term 'virtue', see f. 122v in RN, 'Pride' (UK:Lbl) Add MS 32523: ff. 122–131v (early period?): 'wee mean by it onely a will or chois determined to good'.

³⁶ According to Sprott, *The English Debate on Suicide*, p. 71, during this period the average annual rate of suicide in greater London was 'roughly fifty percent higher than in the 1670s', with a sudden rise in 1683 and then another sudden increase between 1700 and 1706. For additional statistics and problems in gathering them, see Macdonald and Murphy, *Sleepless Souls*, pp. 360–66.

mind, so as if ever I am overwhelmed in irremediable calamity, and paines, I may, if I find I cannot bear them, put a period to free my self. And in this thought I have great comfort, and have had and shall continue to have all my life long.³⁷

Like Montaigne, then, North's morality is one of self-governance, not one of obedience, for the formula is internal, not external—it derives from North's own experience and his responses to it. By reflecting on these, he tries to discover from the pattern of his responses what is constant and settled in his character. And by this continual weighing of himself, North also judges himself by comparison with others. What is more, he weighs himself by a process that can be recorded and, hence, externalised in writing, even though that process is entirely subjective in operation. Critical reflection, therefore, is central to North's making and maintaining a morality.

But this is not the only story in *Notes of Me*, which begins with what North takes to be a 'truth'—'that the best legacy parents can leav to their children, is good principles, and sound bodys'. To prove this truth, he offers 'some few passages of my owne experience' that illustrate the character of his parents and the method they used 'for forming the minds of [their] children to a prejudice in favour of what is good'.³⁸ And from this illustration he shows that no more elaborate institutions than the family are needed to establish the two decisive

³⁷ RN, *Notes of Me*, p. 210 (italics mine). From evidence in some of his writings, it seems that RN probably did consider ending his life, although he concluded 'it is better to be, then to have no being'; see, e.g., f. 20 in RN, 'Some essays, concerning the manner of our sence, or perception of things' (UK:Lbl) Add MS 32526: ff. 8v–34 (mostly early period). See also RN, *Cursory Notes of Musicke*, p. 148: 'tho life is a burthen, from bodily defects, yet moderate sensations, simply considered are pleasure; becaus they give a consciousness of our being, which is better then not to be'. Although the saying, 'to be or not to be', was common in introductory books on logic as an instance of mutually incompatible contradictories, RN's phrase seems indebted to the question that begins Hamlet's soliloquy on suicide in Shakespeare, *Hamlet* Act III. sc. 1.

³⁸ RN, *Notes of Me*, pp. 79–82, which concern his 'parentele' (kindred), a term of art in law.

categories of good and bad. But a few pages later he interrupts his narration with a digression on the 'force' of 'instinct and habits', the term 'instinct' denoting 'the propensity of mind, derived from parents, as forme and shape of person comonly is'.

North introduces this digression with some reflections on life in the womb,³⁹ in which he states:

...a great deal may be contracted before wee are born, as also some sorts of motion, and the practice of governing the movement of some members by a will, which I beleev subsists before nativity. For as soon as there is life, there is a will, sence, and memory, tho weak in proportion to the tenderness and defects of the compage which conteins them.⁴⁰

By exercising its voluntary power of motion, the foetus acquires 'somewhat of habit', which is considerably 'advanct before the birth'.⁴¹ And by repeated exercise, it also becomes aware of its own existence—a sense of itself and a distinction of its parts.⁴² This

³⁹ RN, *Notes of Me*, pp. 82–6. For more detail on this and some other aspects of the digression, see RN, 'Some essays, concerning the manner of our sence, or perception of things' (UK:Lbl) Add MS 32526: ff. 8v–34 (mostly early period), and RN, 'Of human capacity' (UK:Lbl) Add MS 32526: ff. 34v–47 (early period). For RN's conception of sensory perception, muscular motion and life (spirit, *anima*) as a springy force field held in dynamic tension, see Kassler, *Inner Music*, pp. 167–85, 192–201.

⁴⁰ RN, *Notes of Me*, p. 83.

⁴¹ In 1651 the epigeneticist, William Harvey, noted that by the repeated experience of sucking, a foetus not only grows but also acquires the habit of sucking; see Kassler, *Music, Science, Philosophy*, p. 73. RN cites Harvey at least once; see f. 224v in RN, 'Authoritys' (UK:Lbl) Add MS 32546: ff. 207–230v (early period). But he seems to have been more interested in preformationism, the theory of encasement first described by Nicholas Malebranche, who used the tulip bulb as an example. See *NP* 6, pp. 11–13; see also the inserted reflections on generation ff. 25–28v in RN, 'Some essays, concerning the manner of our sence, or perception of things' (UK:Lbl) Add MS 32526: ff. 8v–34 (mostly early period).

⁴² By contrast, Locke, *An Essay*, p. 117, held that the child begins without any information of self, because the '*Fœtus in the Mother's Womb, differs not much from the State of a Vegetable*; but passes the greatest part of its time without Perception or Thought, doing very little ... [because] there is little or no variety, or change of Objects, to move the Senses'.

sensori-motor capacity, which North terms 'nature', disposes people to actions of any sort, good and bad, actions which of course will be 'very great ingredients in the forming their establisht characters and courses'.

After birth, however, the instincts appear as character traits—the propensities or dispositions that reveal the 'stamp' of the parents on their posterity. For parents

...transmitt to their children, not onely part of their shapes, but part of their minds also; and considering how the mind and body are twist together so that the one can do nothing without the other, it is no wonder that both are imparted to their issue, so that if the parents are vicious, or vertuous in any kind, the children shall have a propensity accordingly.

North identifies two classes of hereditary propensities, general and particular. The general are common to 'all or most' people and are reducible to 'the generall account of pleasure, and consequently aversion to labour and industry' that leads to 'idleness, and its traine of pleasures', which if allowed to continue, 'become debauchery and all manner of vice'.⁴³ The particular propensities are specific to some people only and include gluttony, false dealing, lying and violence. But 'if judiciously and properly applyed', education, 'the nursery of habits', will 'in great measure, if not alltogether' modify both general and particular propensities, because 'custom'—second nature—'getts the better of instinct'. Indeed, as North was later to illustrate in his life-writings, 'many men spurred onely by their owne reason, have mastered very furious naturall inclinations'.⁴⁴

⁴³ At f. 19v in RN, 'Some essays, concerning the manner of our sence, or perception of things' (UK:Lbl) Add MS 32526: ff. 8v–34 (mostly early period), he allows that 'all the science [i.e., knowledge] of temporall good and evil is resolved into the general notions of pleasure and pain', i.e., appetite and aversion. But note that, e.g., RN, *Cursory Notes of Musicke*, pp. 142–51, does not reduce hereditary tendencies to the avoidance of pain and pursuit of pleasure in the same way as Locke, *An Essay*, pp. 128–9, 229–33.

⁴⁴ RN, *Notes of Me*, p. 84; see also Kassler, *Inner Music*, pp. 168, 200–207.

In the guise of an autobiography, then, North considers, first, what capacities people have by nature; next, what propensities people have by instinct; and finally, what qualities people have that are specifically human. His naturalism, therefore, is similar to that of Montaigne, according to whom people, by nature, have a ‘coherency and resemblance’ to other parts of creation, for although there are ‘some differences’, all are ‘under the visage of one same nature’.⁴⁵ In North’s version, ‘nature’ and ‘instinct’, defined as the innate capacity for, and the propensity to movement, are properties of life in general—‘animal life’ (*anima*). But as he shows from his own example of ‘tryall and long practice’, human qualities, defined as the capacity (‘conscience’) for legality, grow from a consciousness of various bonds and duties, from an awareness of the logical consequences of actions and from a desire for knowing the truth or reality of things. With this knowledge people develop a sense of independence and an unwillingness to be subject to external controls. Since ‘charity begins at home’, people first learn about the good and its steady and prudent pursuit from their own case, after which they are able to generalise to others.

2.2. GENERALISING TO OTHERS

Since a large number of North’s manuscripts contain ‘second thoughts’ about his responses to experiences, pleasant or painful, we may consider them as extensions of his autobiography, even though the topics might be mechanics and physics or building and music, and even though he may hide himself behind a mask.⁴⁶ And since a large number of his manuscripts also represent an ongoing process of self-monitoring, we may regard them as extensions of his method of ethics, a method he also wished to share with, but not impose on others. Indeed, in a preface intended as an introduction to the biographies of his brothers, North recommends keeping a ‘life-

⁴⁵ Montaigne, ‘An Apologie of Raymond Sebond’, *The Essayes*, p. 230.

⁴⁶ See, e.g., *infra* RN, ‘Of Etimology’, ff. 8v–9, where his mask is that of ‘one who affects study’.

journal', so that a man 'might retrospect his actions, and seeing his errors and failings, endeavour to mend them'. Not only would such a journal assist his own case as 'a check upon all his exorbitancies', but also enable others to 'profit by his example'.⁴⁷

That people could profit from the example of others seems important to North; and since he repeats the phrase in many of his writings, it may constitute one of his motives for writing. For example, in a memorandum regarding his executorship of the Lely trust, he points out that he had included 'all I have to remember concerning it; which may be as materiall for information of others, in regard to such trusts'.⁴⁸ In *The Gentleman Accomptant* he recounts what he had learned about double entry bookkeeping 'for the sake [not only] of conscious Honour', but 'also of Advantage to Posterity ... by leaving an Example of Prudence, Oeconomy, and Industry for their Imitation and Encouragement'.⁴⁹ And in *A Discourse of Fish* he expresses the wish that 'any Gentleman, who hath employ'd his Money and Pains in cultivating Waters in Countries that are bless'd with Springs and Rivers, would, for the Benefit of his Posterity and Neighbours, as I have done, set down his Experience'.⁵⁰

But people could also profit from examples in another way. For in the third version of the life of Francis, when remarking on the inclusion of some 'triviall passages' that may not seem 'worth remembring', North adds that, 'being exactly true', such passages are 'part of the natural history of mankind, which is every one's interest to know'.⁵¹ Whereas in the final version of that biography, he justifies the inclusion of a number of 'petit' lives on the grounds that they may 'assist the theory of human nature, its perfections, and

⁴⁷ RN, *General Preface*, p. 78.

⁴⁸ RN, *Notes of Me*, p. 248.

⁴⁹ See *infra* Appendix B: [NORTH] 1714, p. 8.

⁵⁰ See *infra* Appendix B: [NORTH] 1713 (edn. 1714, p. A2v).

⁵¹ See f. 19v in RN, 'Current and extempore recollections' (UK:Lbl) Add MS 32509: ff. 1–157 (middle period); see also RN, *Notes of Me*, p. 225, concerning an incident that 'may seem triviall stuff', as 'most is ... which I present, els I should not draw my owne picture as I intend in these papers'.

infirmities'.⁵² And in what is now regarded as the first theory of biography, the *General Preface*,⁵³ North addresses these last two points more directly. For he assumes that 'all truth, which the word history ever supposes, is useful to be known'.⁵⁴ And 'nothing can be more profitably instructive to private men than relations of other men's proceedings in like condition'. When such 'cases' appear 'in a strong historical light', they function like precedents in law, because they serve as patterns in similar or analogous cases so as to assist 'many persons undetermined ... to choose for the best'.

What is more, the history of a private life provides 'a copious harvest' of

...discretion and wisdom in common dealing, and disposing the affairs of a family, and making fit provisions for it, and also for the education and settlement of children, and other emergent concerns of human life, to be gathered from the patterns of private men, who have at their great risk proved *divers ways of living*, and it may be have found out the best at last, and possibly suffered by their mistakes.⁵⁵

In gathering together some patterns not only from his own life but also from the lives of others, North could represent the different ways in which people, after frequent trials, have learned how to live—some well, some not so well.⁵⁶ And, like the 'experienced

⁵² RN, *Life/FN*, p. 426.

⁵³ I.e., Millard in RN, *General Preface*, pp. 13–24, 39–40. Note that one of FN's 'ingenious' friends, John Aubrey, collected lives like others collect specimens for a natural history; but *pace* Hunter, *John Aubrey*, p. 82, he never wrote a theory of biography.

⁵⁴ RN, *General Preface*, pp. 65–6.

⁵⁵ RN, *General Preface*, pp. 64–5 (italics mine). According to the OED, John Dryden, coined the term 'biographia' in 1683 to denote 'the History of particular Mens Lives'. Perhaps analogously, RN, *General Preface*, pp. 78–9 coined the term 'ideography' for the history of one's own life (the term 'autobiography' was not coined until 1809).

⁵⁶ For three short depictions from his early period, see RN, 'Cursory Notes of Building....', *Of Building*, pp. 7–9.

poet' mentioned by Horace, in writing about these patterns he looked to human life and character as his models and from these derived 'a language that is true to life'.⁵⁷

Recall, however, the sub-text in *Notes of Me*, where North conceives moral development as predicated on the presumption that traits of character are natural to the species.⁵⁸ Because of this presumption, he would need to display the patterns private men have for virtues as well as for defects;⁵⁹ and this requirement would extend even to monarchs. For though 'it were well if Kings were as much above other Men in Sovereign Virtues and Endowments, as they are in Place and Authority', yet they too are 'obnoxious to Failings and Singularities; so as no Man, however Loyal, accounts them infallible or impeccable'.⁶⁰ How, then, does a writer represent people as they are, not as they ought to be?⁶¹ North's answer is that even though 'good and evil are founded upon principles superior to all men's opinions or actions, and fall not in the district or arbitrament of either writer or reader', nevertheless authors should 'call a spade a spade', at the same time maintaining a 'rigour of truth' so as to treat all people impartially—that is, equitably or fairly—by deciding each case on its own facts.⁶² For this standard of impartiality extends 'not solely to facts and existencies, but to characters and moralities, and

⁵⁷ Horace, 'On the Art of Poetry', p. 90.

⁵⁸ For the principal hereditary tendencies (traits) of his three brothers, as represented by RN, see Kassler, *Inner Music*, pp. 200–207.

⁵⁹ According to RN, *Life/FN*, p. 207, a 'life should be a picture, which cannot be good, if the peculiar features, where the subject is distinguished from all others, are left out; nay, scars and blemishes as well as beautys ought to be exprest'.

⁶⁰ RN, *Examen*, p. 432.

⁶¹ Classical models represented public characters as they ought to be. But from the end of the sixteenth century, character writing passed through more sharply individualised portraits to the reflective prose of Montaigne and others; and these developments seem to have opened the way to RN's innovative approach. For the developments, see Smeed, *The Theophrastan 'Character'*, who also, p. 44, pointed to the uniqueness of the characters drawn by DN (1), for which see North, 'Suddain Touches in the nature of Characters, Written about the year, 1625', *A Forest promiscuous*, pp. 82–99.

⁶² RN, *General Préface*, p. 72.

some [writers] are so squeamish that to avoid seeming partial they do justice to nothing; and there lies the greatest difficulty, for truths may be so touchy that a plain telling them, with a proper and due reflection, will be termed partiality'.⁶³

It is an irony of history that North himself was charged with partiality, a charge already noticed at the outset of this study. Of course, he sometimes is partial—what human being is not?⁶⁴ For, as he acknowledges, prejudice grows from acquaintance; and 'you cannot charge any with ignorance, or unacquaintedness'. Indeed, 'the way of living every man hath, gives him a *gusto* to what he hath by use happened to approve of, and that he calls well and others he calls not well'. And 'this sort of prejudice once attach't, is hard to be removed'.⁶⁵ Nevertheless, North believed that a writer 'ought to employ all his Sagacity and Industry to find out the Justice of the Characters of Persons, and then to represent them with exquisite Integrity, lest, mistaking Men we mistake Things, and, for their Sakes, take Good for Evil, and the contrary'.⁶⁶ And, in general, he seems to have acted on this belief by endeavouring to give each character his due,⁶⁷ because 'to write Conclusions or Characters, without distinct Facts to sustain them, is ... the true Method and Style of Libel'.⁶⁸ It will be useful, therefore, to revisit the charge of partiality with reference to one of North's 'petit' lives—his

⁶³ RN, *General Preface*, p. 70; see also pp. 81–2: 'For who is partial that says what he knows and sincerely thinks? I would not as some, to seem impartial, do no right to any'.

⁶⁴ If the standard of impartiality was widely touted during RN's lifetime, then Shapiro, *A Culture of Fact*, provides evidence that it was not often practised.

⁶⁵ RN, 'Cursory Notes of Building...', *Of Building*, pp. 6–7.

⁶⁶ RN, *Examen*, p. 31.

⁶⁷ I.e., as in Cicero's distributive theory of justice; see Kelley, *The Human Measure*, pp. 45, 114. Even in some of RN's 'historiettes' of characters, one can discover a factual underpinning for what at first reading seems like a flippant and partial remark; see, e.g., *infra* RN, 'Of Etimology', f. 10v.

⁶⁸ RN, *Examen*, p. 482.

representation of the moral character of Matthew Hale (in North's spelling, 'Hales').⁶⁹

The representation in question was published in 1742 in Montagu North's bowdlerised version of the life of Francis, a version that has provided the chief text for critics even to the present day.⁷⁰ In 1787 this edition was cited in a collection of law tracts edited by Francis Hargrave,⁷¹ who devoted several pages to a digression concerning North's anxious labour 'to depreciate the character of lord [chief justice] Hale with posterity'.⁷² According to Hargrave, North's 'partiality' and 'prejudice' were exhibited in his 'very injurious portrait of our most reverend judge; for such a colouring is given to this great and inestimable man, that all his numerous good features are endeavoured to be spoiled or obscured, and the few imperfections incident to him are multiplied and exaggerated'. Hargrave acknowledged that his digression was 'actuated by an anxiety to preserve the fame of lord Hale inviolate'. What he did not acknowledge, however, was the means he himself used to preserve Hale's fame by representing him as a judge who was always impartial.

In 1824 another critic, Henry Roscoe,⁷³ who was then preparing to re-issue the bowdlerised version of the life of Francis, described North's representation of Hale as 'extremely inconsistent as well as unjust'.⁷⁴ Roscoe acknowledged that in one of his writings

⁶⁹ Excluding several drafts, there are two 'finished' representations, both consistent; see RN, *Notes of Me*, pp. 164–71, and RN, *Life/FN*, pp. 431–40. These representations are based in part on notes left by FN, on RN's own experience as a student and practitioner at the King's Bench when Hale was lord chief justice there and on his reading of some of Hale's writings on natural philosophy and religion.

⁷⁰ See *infra* Appendix C: NORTH 1742.

⁷¹ I.e., the legal antiquary, who was admitted to Lincoln's Inn (1760) and called to the bar (1771).

⁷² For the digression, see Hargrave, 'Preface', *A Collection of Tracts*, pp. vi–ix. The author was already ill when he wrote the preface, and this may account for some of its oddities; see Baker, 'Francis Hargrave'.

⁷³ For Roscoe, see *infra* Appendix C: NORTH 1742 and NORTH 1824.

⁷⁴ [Roscoe] in RN, *A Discourse on the Study of the Laws*, p. 103.

North had written more ‘respectfully’ about Hale and in another had mentioned one of Hale’s ‘noble’ traits.⁷⁵ But he thought that ‘the hand of an enemy and a partizan is still clearly visible’, because the ‘dislike with which Roger North viewed the political sentiments of Hale, added to the jealousy with which he regarded him, as the rival and opponent of his brother [Francis], totally disqualified him from forming a correct estimate of that virtuous man’s character’.⁷⁶ Nearly one hundred years later, even W. S. Holdsworth remarked that the ‘only discordant note in the view held of Hale’s character by his contemporaries is struck by Roger North’, who picked ‘what holes he could’ in order to justify the career of Francis North.⁷⁷

Of the several points North makes about Hale’s character, two are important for reception history—that Hale’s chief virtue was great learning in the law, whereas his chief defect was a bias towards a political faction, later named ‘Whig’, that sought to undermine the English constitution, or so North believed. Today, when Hale seems to have attained almost saintly status,⁷⁸ it is refreshing to encounter the more recent assessment of Alan Cromartie, who concluded—perhaps reluctantly—that Hale, who was sympathetic to the Puritans, was indeed biased against the Anglican ‘regime’ and that his judicial ‘activism’ tended to take a Whiggish form, because he regarded legal rights and puritan religion as expressions of God’s will.⁷⁹ This conclusion supports North’s charge that as a judge Hale did not

⁷⁵ See RN, *A Discourse on the Study of the Laws*, pp. 19–20, 27, 32–3; and RN, *Examen*, p. 530, according to whom Hale ‘was a most propitious Judge to a poor Man’s Cause’.

⁷⁶ [Roscoe] in RN, *A Discourse on the Study of the Laws*, p. 103.

⁷⁷ Holdsworth, *A History of English Law*, vol. 6, pp. 579–80. See also Heward, *Matthew Hale*, pp. 109–11, 114, for a perfunctory attempt to assess RN’s criticisms.

⁷⁸ See, e.g., Berman, ‘The Origins of Historical Jurisprudence’, pp. 1702–21.

⁷⁹ See Cromartie, *Sir Matthew Hale*, pp. 131–5, who assumed without any evidential basis that the *only* point on which RN and Hale were in complete agreement was ‘their advocacy in resorting to the sources of the law’. As will become increasingly apparent, this assumption cannot be sustained; and the same may be said of Cromartie’s descriptions of RN as a ‘Jacobite’ and, in Cromartie, ‘Sir Matthew Hale’, as a ‘malicious’ enemy of Hale.

always apply the standard of impartiality, and it also suggests a reason for that charge.

What North's critics often forget is that morality and law (to say nothing of other domains) are human endeavours, and human shortcomings are part of their story. North, I think, understood this more clearly than many of his critics. In the final version of the life of Francis, for example, he concludes his character of Hale as follows:

Here I have done with this very great lawyer the Lord Chief Justice Hales. And I must not part without subjoyning my solemn protestation that nothing is here set downe for any invidious porposes, but meerly for the sake of truth, first in generall, for all truth is profitable, and secondly in particular, for justice to the caracter I wrote of [Francis North], against whom never any thing was urged so peremptorily as the authority of Hales, as if one must of necessity be in the wrong, becaus another was presumed to be in the right; these two cheifs often were of different opinions in matters of private right, as well as touching the publik. And if one were a Solomon, saint, and oracle, what must the other be taken for? Therefore I have understood it absolutely necessary for me ... to shew Hales in a truer light, then when the age did not allow such freedome, but accounted it a delirium or malignancy at least, not to idolize him.

According to North, public idolatry, whether of Hale or anyone else, illustrates 'a comon error of the comunity, learned, and unlearned', namely, 'when a man is truely great in some capacitys, by the measure of them, to magnifye him in all others, wherein he may be onely a shallow pretender'.⁸⁰

In seeking to address this common error by giving each character his due, North made a point that has escaped the notice of

⁸⁰ RN, *Life/FN*, pp. 439–40, who is particularly critical (and rightly so) about the shallowness of a sequence of Hale's writings published from 1673 as part of the wider controversy concerning the air's elasticity ('spring'). For aspects of this controversy, for Hale's rejection of the air's elasticity and for the stance adopted by FN and RN, see Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 1–21 *et passim*.

critics. But it may be understood from two of the brief lives that he laid side by side—that of Hale and that of another judge, the corpulent Edmund Saunders.⁸¹ Although North sometimes resorts to character types as a rhetorical ploy,⁸² the representations in question are not in the thin man, fat man tradition of character writing.⁸³ For what North shows is that virtues can be forms of people's failings.⁸⁴ In the case of Hale, a special capacity for greatness of mind in law learning is inseparable from a narrowness of mind ('rigour', puritanism) towards good food, music and architecture.⁸⁵ In the case of Saunders, a special capacity for generosity and great-heartedness is inseparable from a sensuality in regard to 'eating, drinking, and as most thought leachery'.⁸⁶

Are people determined, then, by their virtuous or vicious character traits, that is to say, by their hereditary tendencies? The answer to this question would have to be 'no', because North assumes that 'a will supposeth a choice, and choice a foreknowledg or experience of things'; and because will is subject to habit,⁸⁷ people can learn how to take responsibility for their own choices and for the consequences of their own actions. Indeed, he affirms that 'wee have a plaine and clear perception, of such freedome' of choice and action; and therefore, 'wee must beleev [that] which is certein to our sence,

⁸¹ Saunders was a bencher of the Middle Temple (1682) and lord chief justice of the King's Bench (1682). For his character, see RN, *Notes of Me*, pp. 161–4, and RN, *Life/FN*, pp. 441–3.

⁸² See, e.g., *infra* RN, 'Of Etimology', ff. 12v–21v for 'three sortments' of mankind: the learned, unlearned and the barbarous.

⁸³ For the tradition, see Smeed, *The Theophrastian 'Character'*.

⁸⁴ RN, *Notes of Me*, p. 99, also claims to have had 'advantages' out of his own 'defects'.

⁸⁵ For Hale, beauty was to be feared, including beauty in church music; see Cromartie, *Sir Matthew Hale*, p. 176. Regarding Hale's advice relating to architecture, see RN, *Of Building*, pp. 122–3, 128; see also Birrell, 'Roger North and Political Morality', p. 296.

⁸⁶ RN, *Notes of Me*, p. 164.

⁸⁷ See ff. 35 and 46v in RN, 'Of human capacity' (UK:Lbl) Add MS 32526: ff. 34v–47v (early period).

against the arguments [for necessity] formed out of uncertein, and unknowne principles'.⁸⁸ For even though we are sensible of knowledge only 'by the interposition of body' and even though such knowledge is abstract because 'past our examination', nevertheless, if such knowledge 'shines in any thing[,] it is in our being sensible wee have a will and power, and if any thing be an index of the abstract essence of the mind, it must be that reflection' each person has 'that his will is free'.⁸⁹

This statement does not mean that North has a 'libertarian' conception of free will,⁹⁰ because he suggests that freedom is compatible with necessity.⁹¹ For although the 'will and determination of the mind' is 'apt to be snatcht along by the cours of corporeall emergencys', that determination is 'yet overruled, and forc't to comply in a superior manner'. Hence, the will is called, 'as really it is, free'.

For which reason, all morality is in the will, and vice or vertue ascribed only to that. Of which wee may be confirmed if wee doe but consider that wee know our power every moment of our lives, and wee cannot deny it to our selves without belying our owne minds. And whither wee can reconcile it to other apprehensions, or not; it is all one, that is, a truth in originall

⁸⁸ E.g., Hobbes, for whom necessitation makes liberty; see Hood, 'The Change in Hobbes's Definition of Liberty', pp. 150, 152, 157. See also RN, 'A demonstration of free will', (UK:Lbl) Add MS 32526: f. 126 (date uncertain), where he answers some unnamed opponents who believe that freedom is inconsistent with such divine attributes as prescience.

⁸⁹ See f. 26 in RN, 'Some essays, concerning the manner of our sense, or perception of things' (UK:Lbl) Add MS 32526: ff. 8v–34 (mostly early period)—the passages quoted occur in a section that RN inserted after the early period.

⁹⁰ I.e., that genuine free will exists but is not compatible with determinism, because free choices and the actions that follow from them are not causally necessitated by prior events.

⁹¹ I.e., that even if the operations of the will are necessitated by prior events, the products of those operations, in the form of our bodily and mental actions, may still be said to be free in the fullest sense of the term and hence properly subject to moral appraisal as commendable or blameworthy. On the question whether or not Locke was a compatibilist in this sense, see Lowe, *Locke*, pp. 128–59.

perception wee have of our selves, that will not be contradicted. But setting the spark of free will aside[,] all of us that I know is body, or workt and governed by body....⁹²

North, then, is no necessitarian, for in *Notes of Me* he suggests that hereditary tendencies—the character traits marked on the mind of the child at birth—might be ‘mended, but not made’ by custom or education, as well as ‘by the practice of the mind, and its performances’.⁹³ It is important to remember, therefore, that his method of ethics has two inseparable parts, both of which are interlinked and continue throughout life. One part is a process of responding to experience, a process that assists in the formation of desire and passion as well as taste and opinion. The other part involves modifying these habit- and fashion-based norms by critical reflection. For critical reflection is an evaluative process of weighing matters under deliberation, thereby assisting in the formation of more detached, impartial standards.

2.3. *WEIGHING THE EVIDENCE*

North’s scepticism entails that the conditions of concept formation where opinions and taste are concerned reside in an agent’s basic responses to experience, whereas the conditions for impartiality reside in an agent’s evaluation of his or her opinions by an ongoing process of self-monitoring. Morality, therefore, is something practised, so that *no prior, statable set of fixed standards such as rules or laws* can substitute for the inward condition of an agent as he

⁹² See f. 261 in RN, Untitled essay (UK:Lbl) Add MS 32546: ff. 247–262v (early period). Cf. Bacon, ‘Of deformity’, *The Essays*, p. 141, according to whom there is ‘in man an election touching the frame of his mind, and a necessity in the frame of his body’.

⁹³ RN, *Notes of Me*, p. 98; see also *supra* Chapter 2 sect. 2.1. Cf. Locke’s position that the minds of children, like white paper, are first marked plainly by impressions of ideas through the senses but afterwards speedily defaced by irrational teaching of adults, so that a lifetime’s effort is required to repair the damage, especially since custom is a greater power than nature; see Dunn, *Locke*, p. 73.

or she responds to, and evaluates experience. How, then, does one live as a sceptic? In answering this question, North allows his conduct to be guided by appearances (*phainomena*) without committing himself to the truth or authority of the appearances.

By the term 'appearances', he includes not only sense impressions but also everything a sceptic may be tempted to believe—for example, that an object is coloured red or blue, that a musical tone is pitched high or low.⁹⁴ Although confusion is always possible and although error may result from a desire for knowledge, both confusion and error are guarded against by repeated observation and comparison. Nevertheless, 'our senses, or imagination doth not deceive us',⁹⁵ because error results from the mind itself as subjective delusions occasioned either by physical disorders⁹⁶ or by judgments made from hasty inference.⁹⁷ Hence, in practising morality, North counsels that to gratify our inclinations we choose pleasures that preserve health, because health is 'the chief good wee know',⁹⁸ and in making choices we exercise forethought and careful deliberation, because judging is the goal of all deliberation.

According to North, however, there are two kinds of judgments. The first kind are those which are made in response to experiences and which provide the standard for what is only apparently right and apparently wrong. The second kind are those which are made on the basis of an understanding of events and the consequences that follow from them, and these kind of judgments

⁹⁴ See, e.g., RN, *Cursory Notes of Musicke*, p. 102: 'in truth there is neither high nor low really in the case, ... but the musicall termes sharp and flatt serve the turne well enough'. For what 'really' is the case, see further below.

⁹⁵ See f. 250v in RN, Untitled (UK:Lbl) Add MS 32546: ff. 247–262v (early period); see also f. 62v in RN '... a dissertation of the new and moderne (new) filosofye inserted' (UK:Lbl) Add MS 32514: ff. 62–125v (1728). Both manuscripts also reiterate sentiments similar to those in the remaining part of this paragraph.

⁹⁶ See, e.g., RN, *Notes of Me*, pp. 201–4.

⁹⁷ See, e.g., RN, 'Prejudices' (UK:Lbl) Add MS 32526: ff. 2v–7 (early period).

⁹⁸ RN, *Notes of Me*, p. 110, where he also points out that without health, we are 'deprived of the substantiall part of life: eas, and freedome from paine'.

provide the standard for what is really right and really wrong. Trust in appearances, then, does not involve subjectivism, for, in a number of his writings, North argues that reality (e.g., vibrational frequencies) cannot be less than its appearances (e.g., pitches), although it may well be more and in some ways different from the appearances. The appearance provides evidence of reality, a reality that science (e.g., mechanics) represents to us as the result of painstaking inquiries. In short, North refers reason to the *objects* of sensory perception, the truth of which is discoverable through experience and the benefit of experiment.

If reality is independent of our representations, then North holds some version of philosophical realism. But his version cannot be described as naive realism, the kind of realism which most people adhere to before reflection. Rather, because he emphasises the importance of reflective understanding, his realism may be described as a critical realism. For by striving to improve and refine ‘our owne prerogative’—thinking for oneself—he suggests that the

...true cours for doing this is to look back, and candidely examine all our knowledg. And distinguish certein truth, from uncertein opinion, and conjecture, and put a mark upon the former, and reserve the latter for more proof. Wee shall find many things which wee thought indubitable to be but meer dreams; and plaine truths which wee despised, wee shall find to be pillars of science [i.e., knowledge]. Such a process of disquisition in the life of any one, persued with a sincere and honest intention of adjusting his mind to truth, and not of making a trade and profit by his attainements, shall purifie his soul so as his life will be easy, the troubles of the world his scorn, and death it self his indifference.⁹⁹

By ‘uncertein opinion’ North means those unexamined judgments ‘which men take up accidentally, and then defend against reason pertinaciously’. Such judgments can be tested by critical reflection, an evaluative process whereby ‘one that hath made himself impartiall

⁹⁹ See f. 82 in RN, ‘Mechanick notes’ (UK:Lbl) Add MS 32540: ff. 81–118v (early period).

is the better half a philosopher, even though it is not possible ‘for any man totally to discharge his prejudices’.¹⁰⁰ Nevertheless, in attempting to discharge them, a philosopher is assisted in two ways. One way is analysis, which North sometimes likens to algebra,¹⁰¹ for this way discovers ‘abstracts’ or ‘indefinites’—for example, space, time, motion,¹⁰² ‘the word humanity’ and ‘the expression of all morall characters’.¹⁰³ Such ‘abstracts’, therefore, are principles that are the most universal, because they ‘concerne the whole world’.

North, however, cautions that ‘abstracts’ cannot be ‘reducible to any certein test of measure, or experiment’, because they are ‘notions purely of the mind, and to be weighed by reason, and therefore ever were and will be obnoxious to various fancys and opinions’.¹⁰⁴ For if abstract terms are used ‘substantively’, we are deceived ‘into an opinion, [that] there is a reallity where there is none’.¹⁰⁵ This deception occurs when abstract terms such as time or ‘morall characters’ are materialised, that is to say, mentally converted

¹⁰⁰ See ff. 96 and 98 in RN, ‘Prejudices’ (UK:Lbl) Add MS 32526: ff. 96–107v (middle period?).

¹⁰¹ See, e.g., f. 250v in RN, Untitled (UK:Lbl) Add MS 32546: ff. 247–262v (early period). RN’s comparison of analysis to algebra may owe a debt to Hobbes’s concept of nominal definition as an expression of a process of conceptual construction analogous to the definition of a quantity by means of a formula; see Enriques, *The Historic Development of Logic*, pp. 74–6.

¹⁰² E.g., RN, ‘Time’ (UK:Lbl) Add MS 32546: ff. 263–265v (early period?), where he treats time as relative and the context, i.e., the reference system which forms part of a time sequence, as describable in terms of what we now would call information processing. See Kassler, ‘Roger North’, and Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 117–20.

¹⁰³ See f. 50v in ‘Abuses of words’, ff. 50–53 (date uncertain), a memorandum in RN’s notebook (UK:Lbl) Add MS 32548: ff. 27–63.

¹⁰⁴ See f. 231 in RN, ‘Indefinites’ (UK:Lbl) Add MS 32546: ff. 231–246 (early period). See also f. 16v in RN, Untitled essay (UK:Lbl) Add MS 32546: ff. 1–18v (early period?), where, in a section entitled ‘Abstracts’, he observes that certain ‘notions dependant upon body ... can never be cleared, becaus above the reach of our capacitys’.

¹⁰⁵ See f. 51 in ‘Abuses of words’, ff. 50–53 (date uncertain), a memorandum in RN’s notebook (UK:Lbl) Add MS 32548: ff. 27–63.

into things.¹⁰⁶ It is not surprising, therefore, that North often criticises certain philosophers who treat ‘abstracts’ like time and space as real entities, each with its own distinct and absolute, though empirically indiscernible, meaning.¹⁰⁷ Against these philosophers, he argues that ‘abstracts’ are neither constituents of things nor real; rather, they are relational and ideal.¹⁰⁸

Universal principles (‘abstracts’), arrived at by analysis, designate no decisive causes so as to demonstrate certain effects. Whereas other sorts of inquiry do look to particular questions conceived in a certain manner while still conforming to the first principles arrived at through analysis.¹⁰⁹ And in this domain, critical reflection is assisted in a second way by recourse to experience. Recall, therefore, that responses to experience begin in the womb and that after birth the infant brings ‘onely the instruments of motion, a little determined by instinct’, so that experience alone brings on endeavour. And because ‘wee have not power to move any member or part to the porposes of life or arts, but by slow degrees and tryalls’, ‘all that wee doe in life, is acquired, as musick is’.¹¹⁰ For North, therefore, ‘life itself is a course of experiment, the result of which is called common sense’—though, he adds, ‘I may as well term it reason’. But he warns that ‘abstract terms’ like reason should

¹⁰⁶ Regarding people’s tendency to convert ‘the caracter of things to persons’, see *infra* RN, ‘Of Etimology’, ff. 8–8v, and RN, *Examen*, p. 31.

¹⁰⁷ The philosophers in question include Jean Baptiste van Helmont, Pierre Gassendi, Henry More, Isaac Barrow, Isaac Newton and Samuel Clarke; see Leyden, *Seventeenth-Century Metaphysics*.

¹⁰⁸ See, e.g., RN, ‘...a dissertation of the new and moderne (new) filosofye inserted’ (UK:Lbl) Add MS 32514: ff. 62–125v (1728), where at f. 62v he notes that ‘what means wee may arrive at such truths, which are supposed to be generall or universall will be touched upon’, i.e., at ff. 91v–99 *et passim*, and where at f. 96 he asks: ‘I would willingly know, what any one with candor can alledg of reall truth subsisting in any motive instance whatsoever, besides pure relation.’

¹⁰⁹ RN’s writings on the philosophy of music may be classed as inquiries that conform to the universal principle, time; indeed, they constitute his most extensive treatment of temporal relations.

¹¹⁰ See ff. 42–42v in RN, ‘Of humane capacity’ (UK:Lbl) Add MS 32526: ff. 34–47 (early period).

be 'laid aside, and the language [should] fall upon realities'; for example, 'this history is true, this action wise, this ordinance politick, this resolution virtuous, or this argument reasonable'. For when 'meer words' are 'taken for things, and without any signification really defined', they 'pass in discourses as axiomata, and serve in the quality of principles to sustain certain pretended demonstrations'.¹¹¹

This last statement could apply to the discourses of a number of philosophers. For both Hobbes and Pufendorf supposed that moral axioms, though collected from experience, could be deductively demonstrated,¹¹² whereas Locke explicitly stated that 'from self-evident Propositions, by necessary Consequences, as incontestable as those in Mathematicks, the measures of right and wrong, might be made out, to any one that will apply himself'.¹¹³ And since, for Samuel Clarke, moral necessity was to be understood as mathematical necessity, he too believed that 'the great obligations and the principal motives of morality are indeed certainly discoverable and demonstrable by right reason'.¹¹⁴ It is important to note, therefore, that in mathematics, the propositions are connected one to another, and demonstration establishes an implication between a premise and its conclusion *irrespective of the truth or falsity of either*. North, therefore, consistently denies that moral truth can be demonstrated 'with that rigorous certainty as mathematitians pretend'.¹¹⁵ But if mathematics cannot provide the standard to which morality should aspire, what, then, can provide it?

¹¹¹ See f. 120v in RN, 'Reason' (UK:Lbl) Add MS 32526: ff. 120–123v (middle period).

¹¹² See Schneewind, *The Invention of Autonomy*, pp. 91, 127.

¹¹³ Locke, *An Essay*, p. 549. See also Schneewind, *The Invention of Autonomy*, pp. 147–9; Leyden, *Seventeenth-Century Metaphysics*, pp. 204–6; and Dunn, *Locke*, pp. 65–7, 83.

¹¹⁴ Quoted in Schneewind, *The Invention of Autonomy*, p. 323; see also *ibid.*, pp. 317, 370–71 *et passim* for Clarke's attempt to restate Locke's natural-law conception of obligation as moral necessity, understood as absolute or mathematical necessity.

¹¹⁵ RN, *Cursory Notes of Musicke*, p. 33; see also *infra* RN, 'Of Etimology', f. 51.

North's answer is indebted in the first instance to his experience of courtroom procedure under both Hale and his brother Francis, the two judges, according to Barbara Shapiro, who first applied the English law of evidence, albeit haltingly.¹¹⁶ But North also benefited from private discussions with Francis¹¹⁷ and, later on, from access to his brother's papers, including a brief but important memorandum entitled 'Of Evidence',¹¹⁸ which begins: 'The question is, what is truth?'.¹¹⁹ Francis North raised this question in relation to the problem of judging in a legal case 'where witnesses swear directly contrary to one and other and wherein two great parties are engaged on either side to support the credit of their witnesses'. In such a case, his advice was that the jury—'they who are judges of the fact'—should 'consult with themselves, and weigh all circumstances, and as they in their consciences beleev concerning the testimony so are they to give their verdict [i.e., verdict]', whereas the judge (for reasons assessed in the memorandum) should have 'discretion, to hold the scales to the jury, and shew them the weight'.¹²⁰

The legal evaluation of both testimonial and circumstantial evidence requires an indefinite number of material assumptions or independent propositions.¹²¹ These deal with matters of fact, and

¹¹⁶ Shapiro, *Probability and Certainty*, p. 193. At some point, RN also read the treatise on light of Christian Huygens, whose demonstrations were probabilistic, not mathematical; see, e.g., Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 104–8.

¹¹⁷ RN, *Notes of Me*, p. 211, according to whom 'wee [i.e., FN and RN] were more disposed to demonstration, then authority'.

¹¹⁸ See RN, *Life/FN*, pp. 58 and 393.

¹¹⁹ See John xviii.38; see also Bacon, 'Of Truth', *The Essays*, pp. 15–17, and f. 120 in RN, 'Reason' (UK:Lbl) Add MS 32526: ff. 120–123v (middle period).

¹²⁰ For a transcription of FN's memorandum, see RN, *Life/FN*, p. 393. For a comment on RN's earlier and (probably) original copy of this memorandum and for its relation to the development of the law of evidence, see McNair, 'A Fragment on Proof', pp. 144–8.

¹²¹ Regarding circumstantial evidence, see RN, *Notes of Me*, p. 199. According to Shapiro, *A Culture of Fact*, p. 21, in addition to eyewitness testimony, circumstantial evidence sometimes played a role in criminal cases such as

demonstration provides the proof by which to conclude that each proposition is true. According to Roger North, therefore, 'judgment ... never can act, but upon true facts; els it is not judgment, but illusion'.¹²² And in an incomplete draft of an essay, he also points out that 'in matters without the survey of imediate sense', demonstration is from 'analogy or paralel reason' and argument is from

...probabilitys or in plain English guess, but that often so shrewdly as in many instances to have credit little less then if demonstrated rigorously [i.e., by mathematical reasoning]. But yet in conjecturing men should never engage their minds in any thing beyond reserve. They may be very clear of opinion and yet not be wedded to it[;] but if future discoverys alter the state, their assent may goe along.¹²³

In addition to argument from analogy, demonstration includes repetition of instances.¹²⁴ But North warns that 'repe[a]ted experiments make probable, but doe not prove [that] the sun may not rise tomorrow', though there is 'an high or souveraine probability' that it will do so.¹²⁵ Indeed, in 'naturall science' there is a distinction between things that have 'reall existence' and 'events or consequences' that are 'affirmed by induction onely'; and since induction 'admitts no absolute certeinty', events fall into 'the rank of conjecturalls' that are regarded 'in all conceivable degrees of probabillity'.¹²⁶

prosecutions for witchcraft, though its 'inferior status was assumed by the legal community at large'.

¹²² RN, *Notes of Me*, p. 222.

¹²³ See f. 106v in RN, 'Prejudice' (UK:Lbl) Add MS 32526: ff. 96–107v (middle period?).

¹²⁴ Cf. Locke, *An Essay*, p. 667, according to whom '*Analogy ... is the only help we have, and 'tis from that alone we draw all our grounds of Probability*'.

¹²⁵ See f. 66 in RN, 'Preface to a filosofick essay' (UK:Lbl) Add MS 32526: ff. 64v–68 (early period).

¹²⁶ See f. 64v in RN, '...a dissertation of the new and moderne (new) filosofye inserted' (UK:Lbl) Add MS 32514: ff. 62–125v (1728).

These remarks, which occur in some of his improvisatory essays, are hints only of North's conception of demonstration, the details of which may be better understood from the argument in a few of his more systematic writings.¹²⁷ In these, his procedure is to begin with a general principle that he assumes to be true (e.g., elasticity).¹²⁸ He then proves the truth of other independent propositions by two principal means: repetition of instances (statistical means) and analogical reasoning (rational means, i.e., deduction from previous knowledge). Not all independent propositions are known to be true, because North's examined instances, in which a general proposition is verified, are not known to be representative of fair samples of the entire class to which they belong. The problem—known afterwards as the problem of induction—is to determine to what extent the samples are fair. In this determination analogy also plays a role, for if North's examined instances (e.g., water, air, sound) are known to be analogous in certain important respects with other phenomena (e.g., pendulums, musical strings) that previously had been better explored, a generalisation which is known to hold for the latter may be adopted for the former with practically no changes. Hence, he can assert that 'wee have onely to take care, that wee hold to strickt analogy with knowne things, and not thwart experience. And then wee are in the best way, that is possible to be contrived for naturall knowledg'.¹²⁹

North, therefore, combines hypothetico-deductive and inductive procedures (*a*) by assuming a general principle from which all sorts of consequences can be deduced with the aid of logic and other independent propositions, (*b*) by proving some of these independent propositions by multiple instances using one or the other

¹²⁷ The summary here is from RN's mechanics of music, the general principle of which is elasticity; see, e.g., RN, *Cursory Notes of Musicke*. Note, however, that his philosophy of music also includes a 'semantics', which has its own general principle.

¹²⁸ RN could assume the truth of elasticity, because it was a phenomenon that had been experimentally demonstrated. See Kassler, *The Beginnings of the Modern Philosophy of Music*.

¹²⁹ RN, *Cursory Notes of Musicke*, p. 8.

sampling technique (statistical, rational), (c) by presenting his demonstrations as suppositions imposed by hypothesis, and (d) by confirming his suppositions by experiment or experiences that serve to validate the hypothesis, promoting it to the rank of theory. His inductive argument does not demonstrate a general principle in the strict mathematical sense, but it may prove it to be sufficiently evidenced, so that it can be concluded with probability that the principle is applicable to the case at hand.¹³⁰

In a piece of writing that seems to be a work in progress,¹³¹ North summarises some of his ‘second thoughts’ concerning how we come to know reality (‘truth’), first, from perception—impressions on the organs of sense and the appearances from thence formed in the imagination—and, second, from judgments or conclusions drawn by reasoning upon the data of perception. But, as previously indicated, there is a discrepancy between appearance and reality; and the reason for this is that nature has limited our capacity for motion and, hence, for information processing to what we can actually or mentally number or count. Indeed, ‘all our failings in comon judgment of things grow out of’ this natural limitation. For

It is certein that our sensations are received thro the interposition of bodys, and particularly that machine wee claime the gouvernement of and call our owne. The constitution of that is such, (at present no matter how or why,) that wee can move our members, but in a certein manner; and with a determined celerity. ... So men that count any thing passing, either by nodd or motion of the hand keep company with them, and if they pass faster then those nodd will distinguish, the account is lost. ... The consequence of these defects (if I may so call our corporeal powers, tho regulated by the laws of body, which are perfect) is, that if motions have returnes

¹³⁰ RN’s procedure resembles a ‘put-case’—a legal case argued from an hypothesis or supposition. For an example of FN’s use of this procedure, see Kassler, *The Beginnings of the Modern Philosophy of Music*; for an example of RN’s use, see *infra* Chapter 3 sect. 3.1.

¹³¹ See ff. 247–256v in RN, *Untitled* (UK:Lbl) Add MS 32546: ff. 247–262v (early period), the rest of which pertains to the nature of things known by experiment.

swifter then any motion of our bodys can keep pace with, all distinction ceaseth, and the idea [i.e., appearance] is confused, and the sensation is as of a thing continued. So wee distinguish the movement of the musitian's hands, but not the vibrations of his strings; and the like.¹³²

Since, then, our beliefs fall short of reality, we must continually live with the risk of being in error. And since there also is a 'want of needful discoverys' called experiments, 'wee doe not comand a clear knowledge of the universe and to say truth but of very few things in it'. What knowledge we do have consists 'in different degrees of probability, some more and some less, and scarce any, in absolute certainty but our immediate sensations and what is included in them'.¹³³ Nevertheless, we may attain to near certainty in the study of 'natural things', because these 'onely are truely to be esteemed knowable, for there is a stated truth of them, which may be affirmed or denied'.¹³⁴

If natural philosophy is a 'science of truth', as North claims,¹³⁵ then the manuscripts that represent his 'second thoughts' about this science provide evidence that he is a seeker after truth and, hence, a

¹³² Op. cit. For specific treatments of nature's limitation with regard to musical information processing (RN's model for information processing in general), see, e.g., RN, 'Some Notes upon an Essay of Musick', pp. 183–5, p. 184, and RN, *Cursory Notes of Musicke*, pp. 81–2. See also ff. 253v–254 in RN, Untitled (UK:Lbl) Add MS 32546: ff. 247–262v (early period), where at ff. 254–256 he considers mathematics not only as a demonstration of, but also as a means to overcome nature's limitation.

¹³³ See f. 252v in RN, Untitled (UK:Lbl) Add MS 32546: ff. 247–262v (early period).

¹³⁴ See ff. 108v–109, 'The infelicitys of naturall philosophy' (middle period), one of the memoranda in RN's notebook (UK:Lbl) Add MS 32549: ff. 103–109v.

¹³⁵ See f. 89 in RN, '...a dissertation of the new and moderne (new) philosophy inserted' (UK:Lbl) Add MS 32514: ff. 62–125v (1728). According to Dunn, *Locke*, pp. 78–83, Locke believed that *no general truths about nature* could be known. But this statement seems to apply only to Locke's notion of substance defined as a substratum, that is, as some particular instantiation of a set of determinate universals, because Locke dealt with other universals such as space and time.

sceptic in the original etymological sense of the term.¹³⁶ Indeed, as he himself reveals, he chose natural philosophy for ‘diversion, as well as study’, because truth is

...what nature leads directly to, and advanceth in us by continuall degrees more or less from the first opening our eys in the world, to the finall closing them againe. And hath so litle relation to fraud or profit as scarce corruptible that way, but is courted for its owne sake purely, and returnes to the mind onely so much of satisfaction and repose as is adequate to that application [that] hath bin bestowed upon it. And if that succeed not happily in all the subjects curiosity leads to inquire into, yet in the principall and more generall [subject,] it seldome failes to give content.

What is more, the study of natural philosophy takes in, ‘as auxiliary’, ‘a reasonable skill in all other arts whatsoever, so that a profest naturalist may not[,] without blushing, be absolutely ignorant of any thing’.¹³⁷

2.4. EMBODYING PRACTICAL WISDOM

Since North holds that natural philosophy is the study of reality (‘truth’), what about other studies? His answer is that these ‘other pretensions are flux and have no reall existence’.¹³⁸ For example, there is ‘nothing reall’ couched in morality, because ‘what is not religious, is politik, and neither [of those] affords any abstract truths’. And as for law making (‘legislature’) and jurisprudence, these

¹³⁶ I.e., literally, an inquiring, reflective person.

¹³⁷ See ff. 194–194v in RN, ‘Prefaces’ (UK:Lbl) Add MS 32546: ff. 191–194v (middle period), the last statement in which provides one possible explanation for the range of RN’s writings.

¹³⁸ The quotes in this paragraph are from ff. 108v–109, ‘The infelicitys of natural philosophy’ (middle period), a memorandum in RN’s notebook (UK:Lbl) Add MS 32549: ff. 103–109v. See also f. 117 in RN, ‘Pleasures of the mind’ (UK:Lbl) Add MS 32526: ff. 117–119v (early period?), where he defines ‘irrealities’ as ‘things of which wee have no certein and determinate knowledge’.

studies are merely ‘the puzzlings and strivings among men of which there is comonly more fals then true’. Nevertheless, North affirms that in all studies, save one, there is a rational path to probable knowledge of varying degrees.¹³⁹ But he denies that there is any such path to religion, because that study is ‘built upon knowledg for miracles, that require faith’.

In denying that Christian doctrine is a matter of proof, North, like Montaigne, combines scepticism with fideism.¹⁴⁰ Moral truth is derived from an original divine revelation—for North, the two commandments in the Gospel that specify our duties to God, as well as to ourselves and others—and that truth is transmitted traditionally ‘to others universally in an historical way’.¹⁴¹ The obligation to God includes obedience ‘in generall’; that to ourselves, all ‘the virtues ... that tend to make a man happy within himself’; and that to others ‘takes in obedience to the gouvernement and the laws of it, justice [i.e., fairness] and syncerity in private dealing, peacablemindedness, and all the morality that tends to prescribe society, peace, and comon utility of men’.¹⁴² In North’s interpretation, the duty of the second commandment involves a direct pursuit of the good for ourselves and for others. But since his morality is one of self-governance, is there not an inconsistency with the first duty, obedience to God?

An answer to this question may be found nearly at the outset of *Notes of Me*, where, in a passage relating to his childhood experiences, he remarks, ‘certainly nature calls for that which is good for it self’.¹⁴³ In this seemingly casual remark, North equates being

¹³⁹ A high degree of probability may be assigned to music, because this has a ‘rationale’ in natural philosophy, i.e., in that part of physics now called ‘acoustics’.

¹⁴⁰ For an analysis of this term, see Popkin, *The History of Scepticism*, pp. xxi–xxiii.

¹⁴¹ See f. 123 in RN, ‘Reason’ (UK:Lbl) Add MS 32526: ff. 120–123v (middle period), regarding the Gospel as ‘the place of an undoubted revelation’ and as an instance ‘whereof the history is vouch’d better than any other historys are’.

¹⁴² See f. 124v in RN, ‘Religion 1.’ (UK:Lbl) Add MS 32549: ff. 124–125v (early period).

¹⁴³ RN, *Notes of Me*, p. 80.

with goodness,¹⁴⁴ an equation that helps to explain both the nature of obligation and of God's involvement in morality.¹⁴⁵ For God as the source of our being is also the source of our moral obligations—the duties to ourselves and to others. And as will become clear in the next chapter, the *content* of our obligation to God is 'to keep covenants', namely, the two commandments and, by implication, all other agreements.¹⁴⁶ For the Gospel prescribes that rule of living as 'eternally fixed, and determined' and, hence, 'not subject to the incertaintys of fancy, which men call reason'.¹⁴⁷ Hence, although 'every man is supream governour of all his owne actions',¹⁴⁸ and although we have 'onely ourselves and our owne actions to answer for', yet 'how easy it is to governe them' by such 'a plaine rule of living'.¹⁴⁹

According to North, the two commandments of the Christian religion 'not only are sacred arguments but also 'consummate Wisdom'. As an example of such wisdom, he offers the following argument: 'Is the Consequence doubtful? Yes. Is the Honesty clear? Yes. Then follow that.' Over time, he suggests, this argument is contracted into a perspicuous sentence, 'Honesty is the best policy'.¹⁵⁰ And in such 'ancient approved Maxims' is found 'the

¹⁴⁴ According to Schneewind, *The Invention of Autonomy*, pp. 123–4 *et passim*, Hobbes and Locke rejected this equation by defining the good in terms of desire, and Pufendorf rejected it outright.

¹⁴⁵ The equation also helps to explain RN's sceptical principle—that the evident is true—for this principle is based on his fideistic belief that the complete goodness of the universe would have to be denied if the human desire to know were eternally thwarted. Indeed, God made 'curiosity'—the desire to know—'an universall, and never failing attendant on humane nature'; see RN, *Cursory Notes of Musicke*, p. 144.

¹⁴⁶ See further *infra* Chapter 3 sect. 3.3.

¹⁴⁷ See f. 123 in RN, 'Reason' (UK:Lbl) Add MS 32526: ff. 120–123v (middle period).

¹⁴⁸ See *infra* RN, 'Of Etimology', f. 67.

¹⁴⁹ RN, *Notes of Me*, p. 182.

¹⁵⁰ RN, *Examen*, p. 352. For this saying, see also RN, *Notes of Me*, p. 179, and RN, *Life/FN*, pp. 153, 227 ('the truest maxime, tho least in practise').

Experience and Judgment of Ages, perhaps, in some Instances, ever since the Creation of the World, collected and traditionally conveyed, through all Times, down to us'. And because 'Men are so far sensible of impotency to judge of various Incidents by a direct Skill', 'they naturally fall upon Rules and Maxims, *though they be of their own Choice and Framing*, and gathered from their own single Experience, or [the experience] of others as shallow'.¹⁵¹

Maxims, therefore, embody a wisdom that is practical, for they enjoin us not only to tell the truth but also to treat all persons impartially and the like. But maxims are also the commonplaces that a sceptic uses in service of faith. For example, the sceptic's maxim to obey the laws and customs of one's country may seem to reduce justice to local norms.¹⁵² But the fideist believes that the revealed commandments are universal standards of 'justice and peace in the world', that is to say, they are 'real laws of morality, enforced with promises of rewards and terroure [i.e., warnings] of punishments in the highest and most flagrant state of human concernment'. Indeed, 'no power on earth can dispense with these laws, nor criminals lie conceal'd'; and if such commandments were to be 'evulsed out of men's minds', the world would be 'as a forest of wild beasts'.¹⁵³

In the passages quoted above concerning the 'consummate Wisdom' of the two commandments, North makes two suggestions: first, that the commandments revert from the letter to custom in the form of maxims; and second, that ancient as well as newly coined maxims do not repeat the original words of the commandments.¹⁵⁴

¹⁵¹ RN, *Examen*, p. 352 (italics mine).

¹⁵² For the Roman jurist, Ulpian, the three 'commandments' of law are (1) to live decently (*honeste*), (2) not to injure another, (3) to give each man his due; see Barker, *From Alexander to Constantine*, pp. 259–60. According to Schneewind, *The Invention of Autonomy*, pp. 248, 268, these three principles, preserved in the opening chapter of Justinian's *Institutes* I.I.3, were commonplaces used by seventeenth-century philosophers of law to organise their views on the topic of justice.

¹⁵³ See ff. 122–122v in RN, 'Reason' (UK:Lbl) Add MS 32526: ff. 120–123v (middle period); see also RN, *Notes of Me*, p. 240.

¹⁵⁴ Cf. RN, 'Of Etimology', f. 20v.

To grasp the implications of these suggestions, here is a little thought experiment. Imagine the commandments as the ancient constitution, the traditional system of law and government stretching back into the mists of antiquity.¹⁵⁵ Then imagine both old and new maxims as customary laws that grow from the ancient constitution, not by repeating it but by changing the meanings of the words over the centuries. What is required, therefore, is an historical justification for present procedures and institutions somewhat like the common law's reliance on case law and precedent. In a nutshell, this is North's jurisprudence, a jurisprudence that differs from two other philosophies of law available in his day, both of which are versions of natural-law jurisprudence.¹⁵⁶

The older version—classical natural-law jurisprudence—reached its culmination in the Catholic, intellectualist, scholastic philosophy of Thomas Aquinas, who combined Platonic and Aristotelian ideas with the biblical idea of God as lawgiver of a hierarchical universe of being and a distinctive conception of natural law as the participation of the eternal law in reasonable creatures.¹⁵⁷ Although supernaturally imprinted in the human mind, natural law can be known naturally (i.e., without supernatural assistance), because it is an image or type of universal reason, the eternal law that exists in God, who moves everything to its due end—divine justice. As an ordinance of human reason, natural law is the rule and measure of human actions, for it imposes moral obligations. But reason cannot impose such obligations arbitrarily, for natural law must

¹⁵⁵ For a brief discussion of the ancient constitution as the dominant political concept during the reigns of Charles II and James II, the period when 'immediate political circumstances' forced men 'to take actions which directly contradicted their fundamental constitutional beliefs', see Miller, *James II*, pp. 31–6.

¹⁵⁶ Kelley, *The Human Measure*, pp. 213–19, described the two philosophies as 'rational jurisprudence', whereas Berman, 'Origins of Historical Jurisprudence', described them as 'natural-law' and 'positivist' jurisprudence. But the latter description, though accurate from a present perspective, is anachronistic from an historical one. Hence, I have modified that distinction by recourse to the historical account of natural-law morality in Schneewind, *The Invention of Autonomy*.

¹⁵⁷ For classical natural-law jurisprudence, see Friedrich, *The Philosophy of Law*, pp. 42–50; for its reinterpretation by Richard Hooker, see *ibid.*, pp. 67–76.

conform to divine positive law as revealed in the Bible or as taught by the Roman Catholic Church.

Human law is subordinate to, and derived from natural law, so that a legislator's primary function is that of defining or making explicit the natural law by applying it to particular cases and making it effective by sanctions. Since legal rules have moral purposes, words are to be interpreted in terms of such purposes. Accordingly, interpretation involves starting from universal moral principles,¹⁵⁸ human reason then working on the analogy of universal reason. In this kind of reasoning, words will operate within a system of signs resting on overlapping networks of correspondences—relations of similitude of various kinds. Words, therefore, will have multiple ways of signifying and multiple truths. As a consequence, Aquinas did not believe that everyone has an equal ability to become aware of natural law and what follows from it, so that he assigned to the moral theologian the final authority for interpreting both divine and human law.

In the first part of the seventeenth century, Hugo Grotius reformulated classical natural-law jurisprudence, first, by separating natural law from its theological basis and from the jurisdiction of the moral theologian; second, by redefining rights as part of a people's rational nature and, hence, as *prior to* law, not derived from it; and third, by correlating the problem of law with that of mathematics.¹⁵⁹ In the hands of his successors, Hobbes, Pufendorf, Locke and others, this reformulation created a new, modern version of natural-law jurisprudence that was Protestant, empiricist and voluntarist. According to its advocates, the concept of law is founded not on universal reason that exists in God but on abstract reason that exists

¹⁵⁸ According to Schneewind, *The Invention of Autonomy*, p. 21, the substantive morality that Aquinas connected with natural law is the law of the Decalogue supplemented by 'the love commandment'.

¹⁵⁹ See Friedrich, *The Philosophy of Law*, p. 65; Schneewind, *The Invention of Autonomy*, pp. 80, 82 *et passim*; and Cassirer, *The Philosophy of the Enlightenment*, pp. 236–42.

in humans.¹⁶⁰ Hence, natural law is reconceived as the sovereign power's reason, that is to say, the process of deliberation that concludes with an *act* of will—an enactment (statute, positive law).¹⁶¹ Because reason finds representative expression in the enactments of sovereign power, human law is defined as a command by the uncommanded sovereign power (uncommanded because not subject to law), whose legal rules, backed by sanctions, embody its policies.

As a consequence of this definition, precedence is given to political considerations, so that the words of legal rules are to be interpreted in terms of such considerations.¹⁶² And interpretation involves moving from a system of internal mental representations ('phantasms', 'ideas') to determinate referents which are regarded as lying outside the system of representations. Accordingly, a premium is placed on the mind's clear and distinct ideas, as well as on words as signs of ideas, because definitions are to serve as principles for rigorous logical argument.¹⁶³ By recourse to such principles for determining what a legal rule does or does not command, interpreters need not confuse the law as it is—an empirical fact—with the law as it ought to be. Nevertheless, modern natural lawyers do not deny that law ought to serve moral purposes, the ends of justice. But they

¹⁶⁰ For the successors of Grotius, see Schneewind, *The Invention of Autonomy*; see also Friedrich, *The Philosophy of Law*, pp. 84–91, 101–4, 110–15, according to whom, p. 112, 'the law of reason of Grotius and of the Thomistic and Neo-Thomistic philosophers was combined with the naturalistic conceptions of Hobbes into a new synthesis', a synthesis that increasingly emphasised abstract reason 'as the only satisfactory basis for all law'.

¹⁶¹ See Hobbes, *Leviathan*, pp. 127–8: 'In *Deliberation*, the last Appetite, or Aversion, immediately adhaëring to the action, or to the omission thereof, is that wee call the WILL; the Act, (not the faculty,) of *Willing*. ... For a *Voluntary Act* is that, which proceedeth from the *will*, and no other.'

¹⁶² Hobbes, *Leviathan*, p. 322: '...no written Law, delivered in few, or many words, can be well understood, without a perfect understanding of the finall causes, for which the Law was made; the knowledge of which finall causes is in the Legislator'.

¹⁶³ For a useful, if brief treatment of the theories of definition of Hobbes and Locke, see Enriques, *The Historical Development of Logic*, pp. 59–97.

reduce moral purposes to considerations of common expediency only.

North rejects both versions of natural-law jurisprudence. Instead, as the hints in the *Examen* suggest and as the manuscript edited in Part II verifies, his philosophy of law may be described as historical jurisprudence, the foundation for which was laid by Edward Coke and afterwards developed by John Selden, Matthew Hale and others. Although this kind of jurisprudence integrates some features of both classical and modern natural-law jurisprudence, it differs from those philosophies by giving precedence to a nation's law understood as the product of that nation's history, a history that 'both has and ought to have a normative significance for the present and future legal development'.¹⁶⁴ As a consequence, other sources of law, moral or political, are considered subordinate to the historical circumstances and development of a particular legal system, which in England is the system of the common law.

According to the successors of Coke, then, law is founded on tradition, and law itself is an ongoing process of adapting past solutions to present circumstances in the interpretation of legal rules and in the decision of particular cases. But Coke himself gave expression to this conception in the first part of his *Institutes* as follows:

...reason is the life of the Law, nay the common Law it selfe is nothing else but reason, which is to be understood of an artificial perfection of reason, gotten by long study, observation, and experience, and not of every mans naturall reason, for *Nemo nascitur artifex* [Nothing that is against reason is lawful]. This legal reason, *est summa ratio* [is the highest reason]. And therefore if all the reason that is dispersed into so many severall heads were united into one, yet could he not make such a Law as the Law of England is, because by many successions of ages it hath been fined and refined by an infinite number of grave and learned men, and by long experience growne to such a perfection, for the government of this Realme, as the old rule [i.e., maxim] may

¹⁶⁴ Berman, 'Origins of Historical Jurisprudence', p. 1693.

be justly verified of it ... [viz., that] No man (out of his owne private reason) ought to be wiser than the Law, which is the perfection of reason.¹⁶⁵

There are, however, two points to note about Coke's definition of law as reason.

The first point is contained in the deceptively simple but memorable phrase, 'the artificial perfection of reason'. As this phrase makes clear, Coke's model of reason is constructive. For law is made by, or results from art or artifice; it is brought about by skill and not spontaneously; it is skilful in result as well as in process; and it represents *the historical experience and reasoning*—'common sense'—of learned jurists, especially judges. Before Coke, opinions of judges were not sources of law but merely evidence of what the law was commonly held to be by the accepted learning in the profession, 'common learning'.¹⁶⁶ But early in the sixteenth century some writers began to make a practice of discussing earlier cases critically, and some courts took a more methodical evaluation of precedents, so that cases could be dismissed as obsolete (or for other reasons). According to J. H. Baker, the result of these changes was that 'the formal, deliberate judicial opinion was becoming a distinct source of law, to be distinguished from the passing opinion'.¹⁶⁷ Then, from 'the vast array of judicial "examples" that had been accumulating since early medieval times, Coke's definition of law enabled jurists to select those that could serve as broad precedents'.¹⁶⁸ From thence, the idea began to take root that precedents or leading cases were to serve as exemplars—patterns or

¹⁶⁵ Coke, *Selected Writings*, p. 701.

¹⁶⁶ See Baker, *An Introduction*, p. 188.

¹⁶⁷ Baker, *An Introduction*, p. 199.

¹⁶⁸ Lewis, 'Sir Edward Coke (1552–1633)', p. 336. For a brief outline of the changing meaning of the term 'precedent', from its medieval to its modern usage, see Baker, *An Introduction*, pp. 197–9. Note that in the OED (*sb.* 1b, in law), the first citation for the term 'precedent' in its post-medieval sense is the Case of the Seven Bishops.

models—that shape and guide the interpretation of legal rules and judicial argument¹⁶⁹ so as to prevent inconsistencies.

And this problem of inconsistencies leads to the second point to note about Coke's definition of law, namely, his identification of reason with the 'life' of the law. By the term 'life' Coke meant the equitable spirit—procedural fairness—of the common law, for no law is reasonable—right law—unless it is consistent with this spirit.¹⁷⁰ North himself gives voice to Coke's conception of right law, when he writes that

*Tully [i.e., Cicero] in his Book de Legibus, Lib. 2. hath a System of Law, wherein he concludes, that Reason is so essential to a Law, that it cannot subsist without it: And that a Law against Reason is void. So the Common Law of England says also; for if an Act of Parliament erects a Court of Judicature with Power declared to determine by hearing one Side only, that Act of Parliament is void, as being contrary to a Principle of Justice. And such is what Tully calls Reason, meaning some Principle of Justice, without which, the Law would be evil in itself...*¹⁷¹

The implication is that the act of parliament is void because inconsistent with a rule of legal procedure that had been embodied in an ancient maxim, repeated by Cicero, *audi alteram partem*—to hear both sides.¹⁷² North himself repeats this maxim in a number of

¹⁶⁹ According to Berman, 'Origins of Historical Jurisprudence', p. 1681, Coke added 'to the common law a primitive doctrine of precedent', whereas, according to Baker, *An Introduction*, p. 199, the doctrine of the binding force of precedent did not appear until some three centuries later.

¹⁷⁰ When the letter of bad legislation conflicts with the spirit of the common law, 'so far, it is Coke's common law which has prevailed', because 'much can be done by way of interpretation, using the presumption in favour of procedural fairness', according to Baker, *An Introduction*, p. 151.

¹⁷¹ RN, *A Discourse of the Poor*, pp. 19–20. See also *infra* RN, 'Of Etymology', ff. 66v, 97, 99v–100v.

¹⁷² Cicero, *Epistolæ ad Atticus*, 7.18.4. According to Franklin, *The Science of Conjecture*, pp. 104 and 413 n.13, this maxim is even more ancient, for it occurs in the texts of Hesiod, Euripides, Aristophanes and Aeschylus.

writings; but his source could have been Coke,¹⁷³ who seems to have been particularly indebted to Cicero.¹⁷⁴

The equitable spirit of the common law may be illustrated by another maxim—‘to condemne none without hearing’.¹⁷⁵ North repeats and interprets the meaning of this rule of legal procedure in a letter that gives reasons ‘against legislative convictions’. But he wrote the letter as a consequence of an inquiry regarding the efforts of some extreme Whigs who sought to transform ‘a Bill of Indemnity designed to bury the past into a Bill of Pains and Penalties designed to resurrect the quarrels of the past’.¹⁷⁶ For if passed, the Bill would punish members not by the law but by the House of Commons. North’s considered judgment is that ‘it cannot be reasonable in any case to convict and punish by the legislative power persons, who appear, and are ready to abide [by] the ordinary justice of the kingdome’.¹⁷⁷ And as he goes on to state, by ‘ordinary justice’ he means a ‘legall tryall’, the birthright of Englishmen. For without such a trial a man ‘cannot be said to be heard’; and this would be inconsistent with natural justice.¹⁷⁸

¹⁷³ See, e.g., RN, *Examen*, pp. 18, 333; see also *infra* RN, ‘Of Etimology’, ff. 53v, 98v–99 and Appendix B: [NORTH] 1711, p. 4. According to Coke, *Selected Writings*, p. 531, ‘this sentence is directly true: *Qui judicat causam parte inaudita altera, Æquum licet, Statuat, Judex iniquus est* [Whoever gives judgment in a cause without hearing the other side, even if he decides fairly, is an unfair judge].’

¹⁷⁴ See Cromartie, *Sir Matthew Hale*, p. 16.

¹⁷⁵ See *infra* RN, ‘Of Etimology’, f. 51. See also Coke, *Selected Writings*, pp. 1013–14, 1137 (‘Doth our law judge any man, before it hear him and know what he doth?’).

¹⁷⁶ See Roberts, *The Growth of Responsible Government*, pp. 250–54, p. 250.

¹⁷⁷ See f. 2v in RN, ‘A letter in answer to an inquiry touching an act of paines and penaltys, mentioned in the printed votes ... [sic] Jan. 1689’ (UK:Lbl) Add MS 32524: ff. 1–12v. The quotations in the rest of this paragraph, and in the footnote below, are from this text.

¹⁷⁸ The sum of his argument is that legislative convictions are an abuse of power, because they are retrospective and fail to maintain a distinction between the functions of the legislative and executive powers. RN supports his judgment by commenting on ten procedures involved in a trial, to which he adds that ‘by the law

North often uses the phrase, ‘natural justice *and* equity’, but in at least one place he insists that natural justice *is* equity.¹⁷⁹ Hence, by the term ‘equity’, he does not mean Chancery or other courts of equity; rather, he means the procedural fairness of the common law. When consistent with this equitable spirit, law is a reasonable rule—right law.¹⁸⁰ But, as he points out, reason in this sense is not comparative; rather, it is negative, ‘that is, not opposed to naturall equity so as to be inconsistent with it’. For a law

...may be better or wors, to this or that person incidently[,] as may happen in the execution, and all the while be good law. So there might be much better laws substituted in the room of the old ones, when the parliment thincks fitt to order it; but till then the old with all their faults continue in force, not being incompatible with naturall justice.¹⁸¹

From these two examples, it will be clear that procedural fairness is not exterior to, but inheres in the common law. For without this equitable spirit, a law will eventually die, that is to say, become obsolete by disuse or void by legislation.

Coke’s identification of reason with the ‘life’ of the law, then, is not trivial but central to English historical jurisprudence, for Coke and his successors conceive the common law as the *living* embodiment of *past* practical wisdom and, hence, as an identity of nature (*physis*) and convention (*nomos*). Since precedence is given to historical considerations, the subjective grounds of individual experience and reasoning are to be established on, and confirmed by the objective grounds of a ‘common sense’ that is historical and, thus, trans-subjective. What is more, not only legal rules but also judicial decisions are to be evaluated in terms of procedural fairness—the principles of natural justice and equity. For having

of England (and right reason as I take it) no man’s intent is to be punish’t, provided his acts are legall’.

¹⁷⁹ See *infra* RN, ‘Of Etimology’, f. 66v.

¹⁸⁰ See *infra* RN, ‘Of Etimology’, ff. 97, 98v, 99v–100v.

¹⁸¹ See *infra* RN, ‘Of Etimology’, f. 100.

withstood the test of time, those principles claim for themselves universal validity. It is important to note, therefore, that it is this twofold 'scheme' to which North refers, when he describes the common law as 'incomparable' and as the 'best extant in the world'.¹⁸²

2.5. JUSTIFYING THE 'VIRTUES' OF THE COMMON LAW

In the 1631 edition of his *Titles of Honor*, Selden firmly supported the common law, as well as the representation of the constitution as a mixed monarchy, a representation that he himself had introduced in 1610.¹⁸³ And Hobbes not only mentioned *Titles of Honor* with approval but also relied on it for some data.¹⁸⁴ Nevertheless, he was an early critic of the common lawyer's historical jurisprudence, using Coke as their spokesman.¹⁸⁵ Initially, his critique appeared as part of the polemics in *Leviathan*, published in 1650; but between 1662 and 1675 he produced an expanded version, which was published posthumously in 1681 as *A Dialogue between a Philosopher and a Student of the Common Laws of England*.¹⁸⁶ Hale, who read the latter work in manuscript shortly before his death, left a record of his objections to it in a set of 'Reflections', the first of which is on 'Laws in Generall and the Law of Reason' in particular, the second, on

¹⁸² See *infra* RN, 'Of Etimology', f. 89.

¹⁸³ See Christianson, *Discourse on History, Law, and Governance*, pp. 283–4 *et passim*. Note that Selden's representation stressed the role of parliament; note also that there were two other representations (Bacon's and Coke's) that competed with his: (1) a constitutional monarchy created by kings, where initiatives for the crown have the emphasis; and (2) a constitutional monarchy governed by the common law, where the stress is on the role of judges and juries.

¹⁸⁴ Hobbes, *Leviathan*, pp. 158–9.

¹⁸⁵ Hobbes, *Leviathan*, pp. 204, 316, 325–6.

¹⁸⁶ For bibliographical details concerning the latter work, see Cropsey in Hobbes, *A Dialogue*, pp. 1–8, and Macdonald and Hargreaves, *Thomas Hobbes*, pp. 8–9. For negative comments about both the historical jurisprudence of the common lawyers and the representation of the constitution as a mixed monarchy, see also Hobbes, *Behemoth*, which was completed c.1668 but not published until 1679.

sovereign power.¹⁸⁷ Although there have been a number of commentaries on the ‘Reflections’,¹⁸⁸ none of those consulted have suggested either that the first set links a critique of Hobbes’s conception of law with a justification of the common law or that in a 1668 ‘Preface’ published anonymously, Hale made a similar linkage, though without mentioning Hobbes by name.¹⁸⁹

It has been supposed that the sole object of Hale’s ‘Preface’ was to educate students;¹⁹⁰ and certainly, this was one of its aims.¹⁹¹ But its similarities to the first set of ‘Reflections’ suggest that instruction was not the sole object. For example, both ‘Preface’ and ‘Reflections’ hold in common the following two points concerning reason and reasoning. First, reason, which is described as the common ‘faculty’ of all healthy humans, requires habituation through study and practice of a particular art or science, whereby some develop competence in mathematics or logic, others in law or music. Second, a particular competency is not transferable from a formal science like mathematics to a non-formal science like law.¹⁹²

¹⁸⁷ The original manuscript is lost, but two copies have been preserved, one of which (UK:Lbl) Harleian MS 711: ff. 418–439 is the copy text for the edition in Pollock and Holdsworth, ‘Sir Matthew Hale on Hobbes’, pp. 286–302 (first set of ‘Reflections’, pp. 286–94, second set, pp. 294–302).

¹⁸⁸ See Pollock and Holdsworth, ‘Sir Matthew Hale on Hobbes’, pp. 275–85; Heward, *Matthew Hale*, pp. 137–41, 169; Yale, ‘Hobbes and Hale on Law’.

¹⁸⁹ Hale, ‘The Publisher’s Preface’, unpaginated [pp. i–x]. Note that except for this ‘Preface’, Hale’s other *legal* writings remained unpublished during his lifetime.

¹⁹⁰ See, e.g., Heward, *Matthew Hale*, p. 149.

¹⁹¹ Hale, ‘The Publisher’s Preface’, [pp. viii–x], concludes with a section ‘Touching the Method of the study of the Common Law’, and sections advising the student of the benefits of, and cautions in using the abridgment by Henry Rolle that follows.

¹⁹² Hale, ‘The Publisher’s Preface’, [pp. vi–vii]: ‘It is the same power of reason, that with exercise, study, and experience renders a man a good Logician, a good Mathematician, ... a good Lawyer; but yet the same man that is a good Logician, is not therefore presently a good Lawyer’. Cf. Pollock and Holdsworth, ‘Sir Matthew Hale on Hobbes’, pp. 287–8: ‘the Same Facultie of reason variously applyed and directed renders this man a Mathematician, ... [and that man] a Lawyer... [so that] they are not Equally to Expect an equall aptitude and perfection in each others Science or art’.

For although practitioners in both kinds of science make particular deductions and conclusions, yet in law the conclusions are not so determinate as in mathematics, because moral and civil actions, the subject of the law, are in themselves indeterminate.¹⁹³

Hale thus raised an important issue that may be exemplified briefly in relation to geometry and law. The former science begins with definitions; and the deductive method is then employed to explore the logical consequences of the definitions. But law begins with empirical facts, not with definitions; and observation decides between the postulates from which deduction begins. There is, then, a decisive difference between the two domains of knowledge, so that, as Hale implied, mathematics cannot be the standard to which all knowledge should aspire. Indeed, in both 'Preface' and 'Reflections', Hale argued against demonstrative reasoning, that is, reasoning deductively from definitions in the manner of Euclidean geometry. Moreover, in both 'Preface' and 'Reflections', he linked this argument to a justification of the common law and its excellences ('virtues')—consistency, predictability and the absence of *ad hoc* discretionary decision-making.

From these similarities between the two pieces of writing, one might infer that in parts of the 'Preface' Hale was responding, albeit covertly, to Hobbes's 1650 critique. For an aim of that critique was to substitute one principle—the principle that custom, as interpreted by judges, is the arbiter of the common law—with another—that the enactments of a determinate body (sovereign power) are the final source of legal authority. Moreover, as a consequence of Hobbes's advocacy of the supremacy of statute law over the system of precedents on which the common law proceeded, he also sought to replace the common lawyers' constructive model of reason with his

¹⁹³ See Hale, 'The Publisher's Preface', [pp. vi–vii]: 'in matters Moral and Civil (the Common subject of Laws) ... particular deductions and conclusions thereof are not so clear, constant, and determinate, as consequences and conclusions in Logick or Mathematicks are'. Cf. Pollock and Holdsworth, 'Sir Matthew Hale on Hobbes', p. 288: because of the uncertainty and variety in judgments in matters of right and wrong 'when it comes to particulars', i.e., particular moral and civil actions, it is therefore 'not possible for men to come to the Same Certainty, evidence and Demonstration touching them as may be expected in Mathematicall Sciences'.

own model of abstract reason. According to the latter model, reasoning ('mental reckoning') is the adding and subtracting of the consequences of general names agreed upon for the marking and signifying of our thoughts. And this required, first, 'imposing names'—that is, definitions or parts of definitions—and, then, exploring the logical consequences of the definitions by proceeding deductively to demonstrations. According to Hobbes, definitions alone are the principles of demonstration, being truths constituted arbitrarily by the inventors of speech and, hence, not to be demonstrated.¹⁹⁴

Bearing in mind these features of Hobbes's critique, the following is a summary of those parts of the 'Preface' in which Hale justifies the common law, beginning with a definition of law as tradition—as the artificial perfection of reason—although he did not repeat Coke's phrase but elaborated on it. According to Hale's version, the 'Common-Laws of *England* are not the product of the wisdom of some one man, or Society of men in any one Age; but of the Wisdom, Counsell, Experience and Observation of many Ages of wise and observing men'. Although 'where the subject of any Law is single, the prudence of one Age may go far at one Essay to provide a fit Law'—that is, an enactment—yet 'even in the wisest provisions of that kind, experience shews us that new and unthought of Emergencies often happen, that necessarily require new supplements, abatements or explanations'. Because 'the body of Laws, that concern the Common Justice applicable to a great Kingdome[,] is vast and comprehensive', that body consists of 'infinite particulars, and must meet with various Emergencies, and therefore requires much time and much experience, as well as much wisdom and prudence successively to discover defects and inconveniences [i.e., inconsistencies], and to apply apt supplements and remedies for them'. And 'such are the Common-Laws of *England*, namely the productions of much Wisdom, Time and Experience'.¹⁹⁵

¹⁹⁴ Hobbes, *Leviathan*, pp. 100–118, concerning speech, reason and 'science', i.e., knowledge attained by rational deduction from definitions.

¹⁹⁵ Hale, 'The Publisher's Preface', [p. iii].

Although the common laws are 'settled and known', statute laws—what Hale called 'new modell's—take 'a long time before they come to be well known or understood'. Indeed, 'every entire new modell of Laws',¹⁹⁶ though seemingly 'specious in the Theory, yet when they come to be put in practise' are either 'too strait or too loose, or too narrow, or too wide' and, hence, require amendment.¹⁹⁷ Moreover, 'new modell's' are defective, because they proceed by 'rational deduction' from 'Generals',¹⁹⁸ whereas the institution of laws 'in the world' can be found only through 'instruction and education'.¹⁹⁹ And (it is to be noted) *the same is true of language*, for a person might ask why a certain 'Composition of articulate sounds and syllables and words should signifie such a subject, or such an intelligible proposition', or why 'one kind of Composition in *France*, and another ... in *England* should signify the same thing', or why in grammar 'the various terminations of words should render them of several imports and significations'. But in answer to such questions, 'no immediate reason can be justly given or required, but institution or custome, which is a tacite institution'.

What is more, 'something Anologicall to this is to be found not only in the *English* Laws, but in all the Laws in the world'. For though the first institution of the latter was 'not without great and

¹⁹⁶ The word 'entire' implies codification, which could take a number of different forms, according to Friedrich, *The Philosophy of Law*, pp. 251–2. One form, planned but not realised by Bacon, is philosophical and political in nature, for it seeks to codify the law in terms of general principles. But this seems to be the kind of wholesale codification that Hale distrusted, according to Heward, *Matthew Hale*, pp. 171–2, 175. The other form, realised in the code drawn up in the time of Justinian and published during the Renaissance as *Corpus juris civilis*, seeks to bring together and 'digest' a body of existing law, clarifying it, eliminating possible contradictions but not altering it. Note, therefore, that Hale, 'The Publisher's Preface', [p. v], expressed a wish that a similar *Corpus juris* could be extracted 'out of the many Books of our *English* Laws, for the public use, and for the contracting of the Laws into a narrower compass and method, at least for ordinary study'; but he acknowledged that 'this is a work of time, and requires many industrious and judicious Hands and Heads to assist in it'.

¹⁹⁷ Hale, 'The Publisher's Preface', [p. iii].

¹⁹⁸ *ibid.*, [p. iii].

¹⁹⁹ *ibid.*, [p. vii].

profound Reason, and the same is continued with great advantage to society, and prevention of uncertainty in things; yet it were a vain thing to conclude it is irrational, because not to be demonstrated or deduced by Syllogismes'.²⁰⁰ And even though the common laws of England take up 'longer time for their study', because they are 'more numerous' and 'less methodical' than statute laws, yet the 'particularity' of the common laws 'recompenceth with greater advantages, for it prevents arbitrariness in the Judge, and makes the Law more certain and better applicable to the business that comes to be judged by it'.²⁰¹ For the method of the common law requires determining 'general notions of just and honest by particular Rules, Applications, & Constitutions found out and continued by great Wisdome, Experience and Time, and thereby to settle that variety and inconstancy of particular Applications and Conclusions, which [variety and inconstancy] without some established rule would be found in most men'.²⁰²

If, then, the 'Excellency' of the common law rests on 'particular Laws, fitted almost to all particular occasions', there also will have been many changes in succession of Time', because 'Humane Lawes' cannot be 'wholly exempt from the common fate of Humane things, which must needs be subject to particular defects and mutabilities'. But Hale was confident that 'time and experience' will not only give the law 'the perfection it hath' but also 'advance and improve it', because 'the mutations ... hath not been so much in the Law, as in the Subject matter of it', namely, 'matters Moral and Civil' that require a judge to apply the method of the common law when determining general notions of what is honest and just.²⁰³

²⁰⁰ *ibid.*, [p. vii].

²⁰¹ *ibid.*, [p. iii].

²⁰² *ibid.*, [p. vii].

²⁰³ *ibid.*, [p. iv]. On common-law values from a different perspective, see O'Sullivan, *The Spirit of the Common Law*, pp. 141–54, for whom law is not a collection of empirical solutions to problems arising from the daily interaction between humans but rather the practical application of Thomist philosophy and ethics.

Here, then, is the substance of Hale's justification of the common law that included not only a suggestive analogy between language and law but also a critique of demonstrative reasoning, the very reasoning that Hobbes conceived as the standard of rational knowledge. And as will shortly become apparent, North himself endeavoured to construct an extended analogy between language and law, as well as to link a justification of the common law to a critique of Hobbes. What is more, he shares with Hale the notion that changes in the common law are not defects but consequences of human fallibility and 'mutability'. It seems, therefore, that he was an attentive reader of Hale's 'Preface'.

CUSTOM THE ARBITER OF HUMAN LIFE

3.1. RELATING LANGUAGE AND LAW

North probably first read Hale's 'Preface' as a student of the law. But sometime after 1686 he seems to have re-read the 'Preface', for he cites it in a number of his writings,¹ including the piece of writing to be examined in this chapter.² As the associated drafts and fragments testify, this piece emerged from a laborious process in which North tested his experiences of, and responses to the common learning of the legal profession, thereby producing a number of 'second thoughts' or critical reflections on the subject.³ Although the manuscripts containing these reflections have yet to be systematically investigated, the reflections themselves may be classed provisionally into two broad groups. One group led to a brief essay on the study of the law,⁴ a study that Hobbes had dismissed as an unnecessary qualification for a judge,⁵ whereas the second group forms the background to the work to be discussed here. But the two groups are interconnected by their shared concern with 'terms of art' in the common law.

Hobbes and then Locke made a considerable noise about technical terms in general and the abuses of language arising from scholastic terminology in particular.⁶ And North himself points out

¹ RN, *Notes of Me*, p. 170; and RN, *A Discourse on the Study of the Laws*, p. 24.

² See *infra* RN, 'Of Etimology', f. 89.

³ For evidence of this process, see *infra* Appendix A.

⁴ See *infra* Appendix C: NORTH 1824.

⁵ Hobbes, *Leviathan*, pp. 328–30.

⁶ See Locke, *An Essay*, pp. 476, 491–3, 502, 509 *et passim*. Hobbes, *Leviathan*, pp. 101, 108, 115, 690–94 *et passim*, was especially concerned to expose the

that when ‘Thomas and Scotus were in great request’, some of their words ‘infected’ not only the study of the law but also the study of ‘all other literature’ which was ‘barbarised in those days, with cobwebb distinctions’.⁷ Unlike Hobbes and Locke, however, he does not dwell on problems arising from scholastic ‘distinctions’. Instead, his concern is with the language of the common law, a language expressed in what North calls a ‘motley’ style⁸—records in Latin, pleading in English and technical terms in law French.⁹ The book to which Hale added his ‘Preface’—Henry Rolle’s weighty tome, *Un abridgment des plusieurs cases et resolutions del common ley*—illustrates well this mixture of languages, in which law French is represented by black letter and Latin and English, by roman type styles [see Figure 4].

Following the Norman conquest, legal varieties of Latin and French introduced a major barrier between the professional lawyer and the ordinary person, so that in the seventeenth century, when English became the official language of the law, ‘a vast amount of earlier vocabulary had already become fixed in legal usage’.¹⁰ Hence, in his writings on law learning, North promotes the study of Latin and, especially, law French, because, as he states, without knowledge

absurdities (‘insignificant’ words) generated by mistakes about the logical behaviour of different classes of terms—e.g., treating abstract entities (‘*hypostatical, transubstantiate, consubstantiate, eternal-Now*’) as if they were species of proper names, and making a name of two names (incorporeal substance) ‘whose significations are contrary and inconsistent’.

⁷ Appendix A (f. 152), referring to Thomas Aquinas and John Duns Scotus. RN elsewhere points out, Appendix A (f. 87v), that ‘however it hath happened that the law hath bin barbarised *more Thomistico* or *Scotistico*, that style must continue and is so much more remarkable, because the rest of the world are gone off to better and clearer modes of expression’.

⁸ Referring to the introduction of foreign idioms into English (or vice versa); see *infra* RN, ‘Of Etimology’, ff. 26–26v. For FN’s ‘macaronique style’, in which English and law French are intermingled, see RN, *Life/FN*, pp. 46–7.

⁹ Appendix A (ff. 105v–109v).

¹⁰ Crystal, *The English Language*, p. 375. For difficulties in rendering post-classical concepts into Latin, see the amusing examples in Baker, *An Introduction*, p. 87. Note that in 1731 Latin was abrogated within the domain of law.

10. En un Action sur le case si le Plaintiff declare que il suit un Marchant, &c. & le Defendant al intent a luy desamer en son Trade ayant communication del son Trade & de un Partnership enter le Plaintiff & I. S. debant ewe en un certain niefte borate B. parle ceux scandalous parols del Plaintiff, He is a base cheating Knave, and he hath cheated I. S. (le dit I. S. innuendo) and I will prove it; for he received of C. in Partnership 20 l. and gave an Account unto I. S. (predicum I. S. innuendo) but of 5 l. received, del dit C. ubi re vera il done un boier accompt de tous choses enter le Plaintiff & le dit I. S. touchant le dit Partnership, L'Action bien gist sur cest Declaration, car ceo luy disgrace en son Trade, car il luy disgrace en son Partnership que est un parte de son Trade come un Marchant, Trin. 25 Car. B. R. Enter Arundel & Masey adjudge per curiam, cest matter esteant move en arrest de judgment.

11. En un Action sur le case pur scandalous parols & Plaintiffe 40
 declare que sou per divers ans debant il suit verus & fidelis emptor &
 venditor merchandizarum & mercimoniorum, & diversa mercimonia mer-
 chandizas & res per viam bargainizationis & vendicionis emerit & vendida-
 rit, & hujusmodi emprione & vendicione per totum tempus predictum
 usus fuit, & per ceo ad sustaine luy mesme & son familie. le Defen- 45
 dant dit ceur parols de luy, He is a broken Bankrupt, and a declined
 man, not able to pay his Debts, and therefore is run the Country. Con-
 nient que il ne alledge que il use aucun certain Trade, videlicet de m-
 Marchant ou autre certain Trade, uncore l'Action gilt car tel hom-
 me qui use d'acheter & vender & bibe per ceo il deyne l'estatut de Bank-
 rupts coment que il ne soit d'aucun certain Trade. Patch v. B. R.
 Enter Boyer & Shale adjudge per curiam coment que il ne
 move en arrest de judgment. Interim Ed. v. C. 10. 1798.

The languages of the common law
[from Henry Rolle, *Un abridgment des plusieurs cases*
et resolutions del common ley (1668) (A:Nla)]

Figure 4

of those languages, a student would not be able to read the 'authentic' books of the law.¹¹ And, as will become apparent, he also recognises that the stylistic idiosyncrasies of legal language need to be explained with reference not only to the Norman conquest but also to the previous history of successive invasions. For although each language had 'some common fountaine whence all flowed', languages are 'but as severall streams which frequently cross and intermix their waters'.¹²

Like other branches of learning, then, law learning is bound to language and to literary texts. As a consequence, North had to consider linguistic propriety—the formation and meaning of words—as well as authorial intention—the 'larger, and inferentially social and historical, meanings'.¹³ And these considerations, in turn, led him to his central problem—the need to find an interpretation adequate to the relation between language and the law. His solution to this problem is found in 'Of Etimology',¹⁴ a title that suggests a practice to do with words, not with law.¹⁵ But in the course of reflecting on law learning, North concluded, first, that 'the very reasons of the law depend so much on words, as scarce to be exprest in any other language, or termes then those comonly used';¹⁶ and second, that the 'study of laws in generall, and more especially, of the comon law of England may be styled a study of words ... and then surely, a curious etimology, that is, a crittically account of the

¹¹ RN, *A Discourse on the Study of the Law*, p. 14, and Appendix A (ff. 1–49v, 134v, 167v).

¹² See *infra* RN, 'Of Etimology', f. 35.

¹³ Kelley, *The Human Measure*, pp. 210–11.

¹⁴ For the title, see *infra* Part II. Introduction to the Edition: Description of the Manuscript.

¹⁵ This title is reminiscent of Isidore of Seville's medieval encyclopedia, *Etimologiae*, Book 5 of which was adapted from the conception of the nature of law (*jus*) of the Roman jurist, Ulpian. But I have found no evidence that RN was aware of this encyclopedia with its made-up derivations of words.

¹⁶ Appendix A (f. 152v).

termes and sentences of it must be very conducing to a perfection of skill in it'.¹⁷

Although this last statement suggests a glossator's project, North recognised that a search for truth in words is not merely philological but also philosophical, moral, historical and, in short, *not* value-neutral. It also is important to note that between 1640 and 1740 words were treated, first, as signs of things themselves and, then, as signs of thought, that is, mental operations. But, according to Murray Cohen, from 1740 a new correlation began to emerge between thought and style, so that words

...become items in a self-contained, independent human invention. What the new linguist discovers by studying language is not the order or nature of things or the methods of things or the methods of thinking but the specific structure of a language and the status (and stature) of the society that has developed its linguistic habits in a particular manner.¹⁸

In 'Of Etymology', North justifies the operations of the mind as manifested in diction. And since he conceives diction as the manner of verbal expression in speaking and writing, he prefigures the post-1740 developments, the period when etymology proper became a popular topic. Nevertheless, there were a number of earlier attempts to bring evidence of England's linguistic past into the tradition, one of the most notable being that of the non-juror, George Hickes.

In 1698 Hickes was engaged in his monumental study, *Linguarum veterum septentrionalium thesaurus grammatico-criticus et archæologicus*.¹⁹ Published at Oxford between 1703 and 1705, the *Thesaurus* contains a considerable amount of information relating to

¹⁷ Appendix A (f. 83).

¹⁸ Cohen, *Sensible Words*, p. 99.

¹⁹ Published in six parts, Hickes's *Thesaurus* includes grammars of three northern languages: (1) his 'Anglo-Saxon and Mæso-Gothic Grammar'; (2) his 'Grammatica Franco-Theotisca'; and (3) R. Jónsson's 'Grammatica Islandica', with an appended 'Islandish Dictionary'. These are augmented versions of the grammars edited by Hickes and inserted in his *Institutiones Grammaticæ, et Mæso-Gothicæ* (Oxford, 1689). For details, see Harris, *A Chorus of Grammars*.

the history of English law and its terms. Indeed, in one of the proposals for its publication, a promise is made to show ‘the Errors, which many Great Men have committed through Ignorance of ... or want of sufficient Skill’ in the old northern languages.²⁰ And among the ‘Great Men’ listed are Coke and Selden. It is noteworthy, therefore, that at some point between c.1691 and the publication of the *Thesaurus*, North had written several short ‘essays’ on terms of law and sent them to Hickes.²¹ And, as North himself records, upon publication of the *Thesaurus*, Hickes ‘was pleased to honour and oblidg me by his present of a copy’.²²

After Hickes’s death, North wrote to a correspondent that although his own other ‘essays of familiar etimologys are frivolous’,²³ Hickes was ‘then an encourager of such attempts; and however many think such critiscismes impertinent, ... he hath sayd to me that he thought them of use, for the mere enterteinment and pleasure of them’.²⁴ But, as previously pointed out,²⁵ North himself took pleasure in knowing ‘all that belongs to our continuall concernes’; and ‘what is more so then hearing and speaking ordinary things in comon language’, which is not ‘a triviall undertaking’, because ‘the notion of things will follow the knowledg of words’.²⁶ It

²⁰ For the proposals, which are English language summaries of the contents of the *Thesaurus*, see Harris, *A Chorus of Grammars*, pp. 438–44.

²¹ For these brief essays, which treat ‘formes’, ‘wills’, ‘warrantys’ and ‘titles to estates’, see (UK:Ob) MS Eng. Hist. b. 2: ff. 224–231. For some other essays that may have been intended for, but never sent to Hickes, see Appendix A (e.g., ‘High treason’, ff. 194–203v; ‘The words s[c]accarium, exchequer and check’, ff. 204–211v; and the untitled essay on the terms ‘real’, ‘personal’, ‘freehold’ and ‘chattel’, ff. 163–189v).

²² RN to Hilkiah Bedford, Jr., 2 July 1717 (UK:Ob) MS Eng. Hist. b. 2: f. 171v.

²³ I.e., the ‘conjectural’ etymologies, for which see *infra* Part II. Introduction to the Edition: Description of the Manuscript.

²⁴ RN to Hilkiah Bedford, Jr., n.d. (UK:Ob) MS Eng. Hist. b.2: f. 170v, written during the period when Bedford was in process of sorting through the manuscripts and letters that Hickes had bequeathed to him.

²⁵ See *supra* Chapter 1 sect. 1.2.

²⁶ Appendix A (f. 231).

is not surprising, therefore, that in 'Of Etimology' North intends himself 'an enterテインment, by persuing such matters, as ... shall draw ... any thoughts; and [as] fancy shall choos, not declining to discours of any subject that aptly falls in my way; tho perhaps not'. But

I premise this to obviate one expectation, natural enough to be had, from the manner of my setting out; declaring that I pretend not to a just tract, or regular discours, but a sort of familiar essay ledd on by a propence chain of thoughts, which I lett goe sincerely and in the very dress as they appear. If any good comes of what I write[,] it will not be from the substance, but [from] the hint or occasion.... (ff. 2–2v).²⁷

Instead of a systematic treatise, then, readers are to expect not only an improvisatory but also a 'familiar'²⁸ essay devoted to the subject of etymology, a term that, in North's usage, has multiple meanings.

First, there is 'comon' etymology, which studies the 'accidental migrations and metamorfoses of words' and 'consists as well in apt framing and translating, as in the just derivation and analisis of words' (f. 2).²⁹ On this definition, a student of common etymology has two main tasks. One, which concerns 'ordinary' speech, is 'the meer interpretation of words by means of their radicall derivation and composition' (f. 3). The other, which concerns 'peculiar' speech, is the study of diction, a study that includes the use of 'dialects, idioms, proverbial sayings' and other expressions not only in English but also in foreign languages (f. 23). But North also enlarges 'the signification or import of the word 'etimology' to include knowledge that 'will take us into the midst of history[,] not onely of words but of persons and things also' (f. 4). This is what he calls 'extended' etymology, for it is a study that 'adds all truths, if evident, els well

²⁷ In the rest of this chapter, folio references for quotations from RN, 'Of Etimology', are given in the text, not in footnotes. Note that ff. 1–4v are unedited because of damage; see *infra* Part II. Introduction to the Edition.

²⁸ *familiar*: (OED *a* 6c, obs.) plain, easily understood.

²⁹ RN's definition thus includes more than word provenance or derivation, which was the common meaning of etymology; see Michael, *English Grammatical Categories*, p. 185.

grounded probabilitys, that any way relate to the invention, composition, and the use of words, without which I doe pronounce an etimology to be but imperfect' (f. 3). Since, however, 'that sort of history into which etimology conducts' concerns speech, 'the prerogative of the vulga[r]', it 'must of all others be most vulgarly usefull; as may appear often diffusedly in this essay, and the petit specimen that attends it' (f. 4v) concerning the pre-history of the common law.

At the very beginning of his 'familiar' essay, then, North draws attention to the relationship between language and law. But if, as North claims, speech is the prerogative of the 'vulgar', then, according to James Franklin, 'the law cannot possibly be a tangle of esoteric rules that invariably need resort to a lawyer to understand or to have understood on one's behalf', because 'the point of the law is to order ordinary affairs', so that 'the language in which the rules are expressed must be substantially that of ordinary life'.³⁰ In 1698 North himself, in the *persona* of a gentleman of the long robe (the dress betokening the legal profession), observed that puzzles in such legal matters as titles from fines and recoveries served only 'to keep up a Jargon and Misterious Science, beneficial only to Men of Law and Officers, but a vast Charge to the Subject; and that it were well the Law were declared more intelligibly'.³¹

Intelligibility, however, does not mean communicating in 'the plain, unadorned language of everyday speech'; rather, as North well knew from his reading of Horace, it means using a style that employs no unfamiliar diction.³² But to cultivate this kind of style requires 'courting', that is to say, constant practice, for example, in drafting wills, letters and contracts; arguing in court; interpreting statutes; weighing words of judges by common placing or abridging older cases and reporting current ones. What, then, is the relationship between language and law? Although North does not answer this question directly, the contents and structure of his essay suggest a

³⁰ Franklin, *The Science of Conjecture*, p. 349.

³¹ See *infra* Appendix B: [NORTH] 1698, p. 24.

³² See *supra* Chapter 1 sect. 1.4, and *infra* RN, 'Of Etimology', f. 30v.

threefold relation. First, language is the substance of law; second, it is the ‘vehicle’ of the legal tradition; and third, it is a model for that tradition. And it is this last relation that North attempts to use as a means of structuring the two main parts of his argument in ‘Of Etimology’.

That argument can be difficult to follow for a number of reasons. One is that the introduction to the first part of his argument constitutes a defence of erudition or scholarship—learning in general. Hence, the specific context of law learning is replaced by what North calls ‘criticism’, a term that he uses in a number of different meanings,³³ including the action of passing judgment upon the qualities or merits of some thing, person or subject under deliberation.³⁴ But as a domain of knowledge, its principal meaning is closer to what we now call philology, defined not only as a love of ‘polite’ learning but also as the study of literature in a wide sense, such, for example, as found expression in the writings of Selden, who conceived law learning as a study of original sources and a criticism and interpretation of those sources based on an understanding of the historical development of the law.³⁵ It is noteworthy, therefore, that in one of his preparatory memoranda concerning the ‘Attempts of the lawyers in etimology’, North concludes that the one lawyer who ‘comes neerer the mark, in law matters is Mr. Selden’, in some of whose writings ‘we may find a conduct such as I desire to recomend’. For although the approach is ‘but narrow’, yet ‘here and there the antiquitys are ingeniously explained by the moderne; and had the author made this learning as much his profession as the Orientalia [which is] much more remote and abstruse, he had done wonders’.³⁶

There are other reasons, too, for the lack of clarity in North’s argument, perhaps the chief of which is his use of the technique of

³³ See *infra* RN, ‘Of Etimology’, e.g., criticism as a product (ff. 5v, 6), as a study (f. 12), as a branch of learning (f. 13v).

³⁴ See *infra* RN, ‘Of Etimology’, f. 35; see also RN, *Notes of Me*, p. 148.

³⁵ For details, see Christianson, *Discourse on History, Law, and Governance*.

³⁶ Appendix A (ff. 129–130). By ‘Orientalia’ RN means Selden’s Judaic studies.

improvisation to produce his 'familiar' essay. For besides being 'ledd on by a propence chain of thoughts' (f. 2), this technique leaves open the possibility of interpolating additional 'second thoughts', including responses to the experience of reading works of others, only some of which are named. And this possibility deserves consideration in relation to some sections that could have been interpolated if not by North himself then by his son Montagu. For there is physical evidence in the manuscript of interference by the latter, and this may have affected the integrity of the text and, hence, the argument itself.³⁷

Even though North's argument is improvisatory, not systematic, it still may be understood as a quasi legal demonstration of an assumed but unstated general principle—that language, the instrument of thought, is an arbitrary invention of humans and a representation of their changing history ('times') and customary practices ('manners'). For 'language and its modes' are created by 'fashion' and 'by like means as plants ... grow from many litle occasions, and the usage of many persons, especially of esteem, as from seeds and roots' (f. 47v). Indeed, 'the very wrighting [i.e., orthography], no more then style and pronounciation, will never be at any stay, but roll from age to age with perpetuall chang[e] and variety' (f. 43v). But if 'common usage'³⁸ is 'the sole arbiter in all causes of speech and languages' (f. 6), then change must be gradual, for it is impracticable to institute or reform language by 'swift or large steps' (f. 47). Such is the essence of the first part of his argument, which he afterwards extends to legal language and its modes—the language of English politics.

Two points about this argument need to be made at the outset. The first point concerns North's allusions to a classical debate concerning correct usage in language and the standard by which it was to be judged. Those who judged by the principle of analogy (*ratio*) held that grammatical forms were to be classified on the basis of similarity, thereby bringing the power of usage and the advantages

³⁷ See *infra* Part II. Introduction to the Edition: Description of the Manuscript.

³⁸ I.e., the usage warranted or chosen by polite society.

of classification into conflict. In 1668, for example, John Wilkins³⁹ believed that the ‘invincibleness of general Custom was the source of ‘errors and incongruities’ in language, including ‘the *Anomalisms* and Irregularities in Grammatical construction, which ... are so numerous, that Learned men have scrupled whether there be any such thing as *Analogy*’.⁴⁰ But he himself had no such scruple, for he sought to rid language of its anomalies (among other ‘defects’) by classifying words on the basis of their similarity to things. Wilkins, therefore, conceived language as a lexical and taxonomic enterprise, in which classification was to provide a representation of reality.

Some thirty years later John Locke replaced Wilkins’ taxonomic model with a different one. For in classifying ideas and exemplifying their origin by an ‘historical, plain method’,⁴¹ Locke relied on similarity to anchor words to the simple natures that he supposed were the source of clear and distinct ideas.⁴² Consequently, words which stand for ideas ‘have no certain connexion in Nature’ and, hence, ‘no settled Standard in Nature ... to rectify and adjust them by’.⁴³ Instead, ‘common use, by a tacit Consent appropriates certain Sounds to certain *Ideas* in all Languages, which so far limits the signification of that Sound, that unless a Man applies it to the same *Idea*, he does not speak properly’.⁴⁴ But since common usage, ‘the rule and measure of Propriety’, was nowhere established, it

³⁹ Wilkins was the chief source for the Royal Society’s doctrines about language and style, according to Aarsleff, ‘John Wilkins’, p. 362; and RN does answer some of these doctrines. But when he names Wilkins, it is with respect, even admiration; see *infra* RN, ‘Of Etymology’, ff. 42, 44–45v. See also ‘Cohen, *Sensible Words*, pp. 30–4 *et passim*, and Slaughter, *Universal Languages and Scientific Taxonomy*, pp. 161–74.

⁴⁰ Wilkins, *Essay*, p. 18.

⁴¹ See Locke, *An Essay*, p. 44.

⁴² See Cohen, *Sensible Words*, pp. 38–42 *et passim*, who pointed out, p. 41, that many of Locke’s ‘ideas and attitudes’ have a relation to ‘the long-standing claims among seventeenth-century linguists for an existing, retrievable, or created correspondence between words and things’.

⁴³ Locke, *An Essay*, p. 477.

⁴⁴ Locke, *An Essay*, p. 408.

could not settle disputes concerning ‘whether this or that way of using a Word, be propriety of Speech or no’.⁴⁵

For those who judged by the principle of anomaly, there was no conflict between usage and classification, since they accepted irregularity of grammatical forms as a feature present in everyday usage. Hence, according to the ancient sceptic, Sextus Empiricus, ‘one ought to follow the many rather than the one’, so as ‘to hold fast by the common usage of all men’. For then

...there is no need of analogy, but [only] of observing how most men converse and what they adopt as good Greek or avoid as not good. However, good Greek exists either by nature ... or by convention.... But it does not exist by nature, since then the same phrase would never have seemed good Greek to some and not good Greek to others; and if it exists by convention and human enactment, the man who speaks good Greek is he who is most practised and versed in common usage.⁴⁶

Since North himself argues that common usage is the arbiter of practice, he allies himself with the anomalists not only in language but also in law.⁴⁷ For as he elsewhere writes, ‘customary laws are like living languages, full of anomalies’; yet they are ‘elegant and usefull’, because ‘regularity of laws is no more necessary, as to all the good ends of law, then analogy of languages is to the understanding, and the efficacy of discours’.⁴⁸ Moreover, as will become apparent, he conceives language as a social, not as a taxonomic enterprise.

The second point to be made concerns my description of North’s argument as a ‘quasi’ legal demonstration, because even

⁴⁵ Locke, *An Essay*, p. 479.

⁴⁶ *Adversus mathematicos* 1.188–90, quoted in Michael, *English Grammatical Categories*, p. 139.

⁴⁷ And in music, too; see RN, ‘Some Notes upon an Essay of Musick’, p. 190: ‘one man’s caprice, is not a measure of excellence, but the agreement of many, and the best’.

⁴⁸ Appendix A (f. 203v).

though his ‘familiar’ essay is the last surviving version, physical and internal evidence suggests that some parts of it represent thought still in progress. In putting his case, for example, North uses the terms ‘fashion’, ‘usage’, ‘custom’, ‘habit’, ‘practice’, ‘exercise’, ‘manner’, and ‘style’ as nearly comparable terms. To avoid confusion, therefore, the following distinctions need to be kept in mind. Custom is the arbiter, for not only does it rule language but more generally human life in terms of individual experience as habit, collective experience as social usage (‘fashion’) and historical experience as tradition.

3.2. *DEFENDING LEARNING AND COMMON USAGE*

Preliminary to the first part of his argument, North defines the term ‘etymology’, as previously indicated, and emphasises the need for critics to study terms in their historical context. He briefly exemplifies this need by recourse to the terms ‘Whig’ and ‘Tory’ that were coined in his day. His argument then begins with critical reflections on polite learning—the study of literature in the wide sense that he calls criticism in general and common etymology in particular (ff. 5–21v). In the course of his reflections, he defends the study of literature from the ignorant attacks of those who hold that study and its practitioners in mean contempt. Although he never specifically identifies his philistines, the majority seem to represent the administrative and executive class, for they are ‘men of business’ in the now obsolete sense of persons engaged in public affairs—statesmen, courtiers and the like. But the worst of his philistines—the ‘arrogant unlearned’ who frequent coffee houses—are of somewhat lower status, for they assist certain men of business by disseminating libels.⁴⁹

To argue against these philistines, North draws on the tradition of ancient Greek humanism, which was revived during the

⁴⁹ See *infra* RN, ‘Of Etymology’, f. 16v; see also RN, *A Discourse of the Poor*, p. 24, for his definition of ‘men of business’ as ‘well practised in the Affairs of their Country’.

Renaissance as a Christian humanism.⁵⁰ In both versions, however, the ideal of education was liberal studies, that is to say, studies for a free man in the sense of one who was not compelled to acquire any special skill for purposes of utility but could give time to subjects that were regarded as of special cultural value.⁵¹ During the Renaissance, special attention was given to studies of literature and language,⁵² whereas during the seventeenth century there were increasing attempts to undermine such studies, including the study of classical⁵³ as well as other ancient languages.⁵⁴ Initially, these attempts were motivated by the puritan ideal of education, according to which a person was to be educated for a specific purpose, determined not only by his or her natural capacities but also by the sphere of life in which that person was to act. This utilitarian ideal found expression in a number of tracts on education, including that of Locke, who exclaimed: 'Can there be any thing more ridiculous, than that a Father should waste his own Money, and his Son's time, in setting him to learn the *Roman Language*, when at the same time he designs him for a Trade, wherein he having no use of *Latin*, fails not to forget that little, which he brought from School, and which 'tis Ten to One he abhors, for the ill usage it procur'd him'.⁵⁵

But there also were other factors that contributed to the attack on learning, one of which was the assimilation of rational knowledge

⁵⁰ For RN's involvement in one aspect of this complicated reappearance, see Kassler in RN, *The Muscull Grammarian 1728*, pp. 5–11. For allusions to the tradition, see *infra* RN, 'Of Etimology', ff. 24, 25v–26, 95.

⁵¹ Note that for RN, these subjects include physics; see *infra* RN, 'Of Etimology', f. 6.

⁵² For the term 'Renaissance humanism', see Kristeller, 'The Moral Thought of Renaissance Humanism', *Renaissance Thought II*, pp. 20–68.

⁵³ See Michael, *English Grammatical Categories*, pp. 492–514, and Michael, *The Teaching of English*, pp. 135–59.

⁵⁴ E.g., Anglo-Saxon, for which see Hughes, 'Mrs. Elstob's Defense of Antiquarian Learning'.

⁵⁵ Locke, *Some Thoughts*, p. 217. According to Dunn, *Locke*, p. 2, throughout his life 'Locke sustained a deeply Puritan pattern of sentiment, a pattern which places a sense of duty at the centre of the individual life'.

to the standard of mathematics.⁵⁶ As a consequence, polite learning, including law learning, declined in value, so that, according to Wilfrid Prest, the ‘negative image of the common law as an “unpolite study” gained in strength’ during the latter part of the seventeenth century.⁵⁷ The term ‘unpolite study’ means training by apprenticeship for the purposes of making a living by manual labour.⁵⁸ And although some parts of the legal profession were trained in this way,⁵⁹ the bar encouraged the humanist educational ideal by projecting ‘the image of an honourable calling for gentlemen, which—in accordance with classical notions of a liberal profession—was followed from a sense of public duty rather than for lucre’.⁶⁰ Hence, barristers might acquire a fair degree of proficiency in subjects of cultural value, as North himself did in music. But, as he indicates, ‘gentlemen are not oblinded to aime at that perfection [in music], as masters who are to earne their support, by pleasing, not themselves, for it is their day labour, but others’.⁶¹

⁵⁶ See *supra* Chapter 2 sect. 2.5; and Leyden, *Seventeenth-Century Metaphysics*, pp. 57–70.

⁵⁷ Prest, ‘The English Bar’, p. 79.

⁵⁸ The classical equivalent was mechanical study—the study that was appropriate for the slave, not for the free man.

⁵⁹ E.g., the attorney, the main part of whose education consisted in apprenticeship to a practitioner, ‘during which he learned the construction and the use of the common forms and processes of the legal machine’; see Holdsworth, *A History of English Law*, vol. 6, p. 436. See also RN’s memorandum, ‘The Case of Attorneys’, Appendix A (f. 121), where he indicates that an increase in their numbers ‘would clog the trade’.

⁶⁰ Baker, *An Introduction*, pp. 163–4; see also Holdsworth, *A History of English Law*, vol. 6, pp. 440–41. Note that the memorial written by RN, which was placed after his death in Rougham Church, indicates that he ‘freely’ communicated ‘to all Without Fee or Reward, His great Knowledge in the Laws’. The full memorial is printed in the work described *infra* Appendix C: NORTH 1887 (‘Supplementary’, p. lxii).

⁶¹ RN, *Notes of Me*, p. 147. See also f. 58v in RN, ‘An essay of musically ayre...’ (UK:Lbl) 32536: ff. 1–90 (middle period), where he remarks that it ‘doth not become a layman, or one that is not a professor, to deal over much in these criticisemes’.

The rationale for this statement is humanist: that excessive skill—professionalism in liberal studies—is evidence of time wasted.⁶² In 1625, for example, Francis Bacon wrote that studies are used for delight ‘in privateness and retiring’; for ornament in discourse; and for ability ‘in the judgment and disposition of business’. But he had this caveat: ‘To spend too much time in studies, is sloth; to use them too much for ornament, is affectation; to make judgment wholly by their rules, is the humour of a scholar’, that is, a pedant.⁶³ And in 1693 Locke wrote that music ‘wastes so much of a young Man’s time, to gain but a moderate Skill in it; and engages often in such odd Company, that many think it much better spared’.⁶⁴

In several of his writings, North himself alludes to the charge that for men of business, liberal studies are a waste of time. For example, in *Notes of Me*, he apologises for including a ‘long discours’ on music,

...which seems as if I valued my self upon what, collated with buisness and profit, is esteemed triviall and mean. As I am discoursing of my owne life, I cannot but dwell long on those things which have had a great share of my time; but I never made musick a minion to hinder buisness, it was a diversion, which I ever left for profit. And layd it downe, and resumd it, as time inlargd, or straitned with me.⁶⁵

And in his posthumously published essay on the study of law, he admits that the profession of law ‘requires the whole man’, who must ‘not only read and talk, but [also] eat, drink, and sleep law, that is, he must purpose to prosecute his studies daily, till he comes to practice,

⁶² See *infra* RN, ‘Of Etimology’, f. 46: ‘if any are pleased with the imployment of studying any of these uncommon tongues [e.g., Oriental languages], they are censured [by RN’s philistines] as injudicious spenders of their time, taking vast paines to litle or nor porpos’. See also *ibid.*, ff. 6, 7, 108.

⁶³ Bacon, ‘Of Studies’, *The Essays*, pp. 159–60, p. 159.

⁶⁴ Locke, *Some Thoughts*, p. 252.

⁶⁵ RN, *Notes of Me*, pp. 158–9.

and then to be never out of the way of business'. But, like Cicero,⁶⁶ North does not exclude such 'other studies' as history or such 'pleasures' as geometry, music and natural philosophy, for these are permissible if they are 'consistent with the profession, at least not averse or opposite to it'.⁶⁷ Indeed, in the life of his brother Francis, he observes that liberal studies—'humanity' and 'the sciences'—assist a 'professor of the law', who needs to know 'the world, and to have some idea of all things knowable in it'. And he singles out 'above all' 'the art of prompt speaking', which is to be cultivated 'as farr as may be, according to the aptest rules of oratory, because it wonderfully setts off a barr-practiser; and many by that very talent, uncultivated, and owing to pure nature, have succeeded beyond others, much more learned, that have not spoke so readily'.⁶⁸ But he repeats that one who professes law (i.e., one who is a 'professor') may acquire liberal studies as long as these studies do not impeach upon time spent in professional ('proper') studies.

In 'Of Etimology' North confronts the charge of time-wasting more directly by pointing out that 'no one subject can exhaust the content of a student's mind, without more or less calling upon every other subject in the class of learning, to give it perfection', for there is a chain 'in knowledge, as in naturall causes of things, which have perpetuall coherence, and all finally depending on the first and comon principles of things'.⁶⁹ Moreover, life itself does not give time 'to any one person to prosecute effectually any designe in study', so that 'men are chosen out, and imployed, after their capacity, to labour

⁶⁶ See Cicero, *De oratore*, Book 1, for the learning an orator—i.e., statesman—should have, and, especially, the debate between Crassus (Cicero's mouthpiece) and Antonius that centres on law learning.

⁶⁷ RN, *A Discourse on the Study of the Laws*, p. 28. Elsewhere, he writes, Appendix A (f. 89v), that 'scollarship of all kinds will have the whole man, and considering what some have done, none can justly complain for want of time.'

⁶⁸ RN, *Life/FN*, pp. 17–18.

⁶⁹ Here (f. 13) and also *infra* RN, 'Of Etimology', f. 35, the common principles, presumably, are those of nature (*physis*).

in the many severall sorts of work, till the whole is closed'.⁷⁰ And this work is cumulative, for over the course of time critics disprove past errors, discover new facts, and through collating different branches of learning, add new interpretations, 'as if their sagacity and indefatigable industry were provided for posterity by providence, to supply the generall oscitancy [i.e., indolence] in the lives of most men who take no care to prevent their memory perishing with them'. Hence, criticism not only assists humanity to advance by 'excelling in what is progressed', but also preserves the memory of the past for the instruction of future generations.

In the course of his defence of learning, North relies on a number of rhetorical devices, including the delineation of character types—learned, unlearned and barbarous. These delineations differ from the masterly depictions in his life-writings, for example, where, in the full-length portraits of his brothers, he examines the details of a human life in all its complexity, and where, in the miniature portraits of other actors in the drama, he probes the differences of moral character that involve factors such as habits of life, age and occupation. But in 'Of Etimology' his use of character types serves to demonstrate that as character is trained by the civilising power of literature, so 'civility and letters must enter at the cradle or not at all and that not suddenly, for the dullness of the parents will ... cleav to the children, for divers generations'.⁷¹

Since polite learning is also the practice of criticism and interpretation, it necessarily utilises language to communicate its interpretations.⁷² Hence, North devotes the remainder of his argument to considering the ways in which humans use language for

⁷⁰ For division of labour, see *infra* RN, 'Of Etimology', ff. 13v–14, 18. In the courts of common law the labour would be portioned out to solicitors, attorneys, barristers, king's counsel in ordinary (i.e., solicitor-general, attorney-general) and the judiciary; see Baker, *An Introduction*, pp. 163–69.

⁷¹ What cleaves to the children are hereditary tendencies (character traits); see *supra* Chapter 2 sect. 2.1.

⁷² Note that Pufendorf, *De officio hominis et civis*, pp. 56–8, 82–6, devoted two chapters to the duty of users of language in communication and to the 'rules for sound interpretation' for laws and 'for words especially, as the commonest sign' of thought.

the purpose of communicating thought (ff. 22–49v). Although he defines language as ‘a parcell of signes of sounds, and those of things [i.e., appearances] that subsist in the mind’, by the term ‘signs’ North means not only words but also ‘many passions and sentiments’ that, ‘even in comon conversation’, are expressed ‘by meer signes’. There are, then, words as signs and emotions as signs, the latter of which reveal themselves in various ways, including bodily actions. Indeed, North declares that action is prior in nature, a statement that needs to be understood literally in light of his remarks about the foetus in *Notes of Me*.⁷³ Moreover, he observes that actions are less liable to error than words, for words can have ambiguous meanings. And in the case of words that sound the same—his example is ‘sign’ and ‘sine’—their meaning is declared by their spelling.

Similar ideas about language are found in the so-called ‘Port Royal logic’, the ‘noble’ French logic that North recommends.⁷⁴ For in that work the anonymous author (Antoine Arnauld) drew attention to words that can express two different ideas, so that the error people make stems from ‘confounding different things’, as in North’s example of sign and sine. And the same author pointed out that although the proper signification of a word is its principal idea, yet a word often raises several other accessory ideas that have meanings additional to the principal one—meanings that are conveyed ‘by a speaker’s [tone of] voice, his facial expression, his gestures, and so on’, all of which may change the signification.⁷⁵ This kind of logic, therefore, studies the structure of certain forms of thought and, hence, the utterances in which that thought is shaped.

North also draws on two other branches of learning to assist his reflections on language usage. One is grammar in the narrow sense, which studies the material of language, including phonology (‘pronunciation’) and orthography—the treatment of letters (‘characters’) and their combination into sounds and words, the

⁷³ See *supra* Chapter 2 sect. 2.1.

⁷⁴ For details concerning the Port Royal logic, see *infra* RN, ‘Of Etimology’, f. 24.

⁷⁵ Arnauld, *The Art of Thinking*, pp. 81, 90–1. See also Cohen, *Sensible Words*, pp. 34–8 *et passim*.

subject of spelling. Since the material of language is ‘the buissness of comon interpretation’ with regard to such aspects as correct spelling, correct pronunciation and correct word usage, this study assists the speech and writing of every educated person, because it results in grammars and dictionaries compiled by those ‘who have taken the paines of observing the analogys and use of words’. But North’s more immediate concern is with rhetoric, a branch of learning that studies the ‘peculiar purposes for which humans use language. And this involves attention to diction, the ways in which speakers or writers communicate common learning—the learning accepted in a particular profession. For

...in what age or nation soever arts and sciences are invented, transplanted or revived; there goeth with them a peculiar language appropriate to their pratique, such as wee mean when wee say, termes of art: It is but a compendium of the ordinary speech, as proffessors shall propensly use, for the easy and expedite expression of their buissness, in teaching, ordering, debating concerning it.

That technical terms facilitate communication is a point made in a number of North’s writings. For example, in one of his critical reflections on law learning, he remarks on the need for ‘some peculiar way of expression’ whereby ‘the learned’ may discourse one with another ‘without being oblided to [use] perpetuall parifrases’.⁷⁶ In the life of his brother Francis, he observes that the ‘peculiar language’ of the law and the ‘formes signified by proper termes drawne from thence’ enable ‘men of law readily to understand one and other’, but adds that ‘no art, or profession whatsoever, is without a peculiar language, which few but the professors know’.⁷⁷ And in a text written concurrently with ‘Of Etimology’, he points out that the ‘comon lingua’ which organ makers use to mark their pipes is ‘a most necessary dialect’ whereby ‘workmen might readily talk of

⁷⁶ Appendix A (f. 98v).

⁷⁷ RN, *Life/FN*, p. 20.

their buisness as well as see the proper places of the parts of their work'.⁷⁸

In 'Of Etimology', however, North's treatment of technical terminology is placed within a broader context, in which he seeks to show that terms of art, as well as other features of language are regulated in the way Cicero and Horace had supposed—by the usage of polite society (fashion).⁷⁹ And this requires him to consider the possibilities of natural growth in a living language, possibilities that include, for example, the intermixture of foreign idioms into English expression. Although North acknowledges that irregularities ('anomala') might occur as the outcome of a vigorous living growth, he refuses to be bound by rigid conceptions of language that would arrest its natural development.

In the course of his consideration, he introduces the opposing analogist position in the guise of the language purists, who restrict diction to perspicuity, that is to say, unvarnished expression.⁸⁰ And this restriction entails the avoidance not only of foreign idioms but

⁷⁸ See f. 11v in RN's annotated version of the Prendcourt tracts (UK:Lbl) Add MS 32531: ff. 1–41v (middle period); for details of the manuscript, see *NP* 6, pp. 43–152.

⁷⁹ Cicero used the term '*consuetudo*' (custom) in the sense of a norm of the speech community, comparable to the terms *mos* and *usus*; see Kelley, *The Human Measure*, p. 44, and D'Alton, *Roman Literary Theory*, pp. 79–80. And Horace, 'On the Art of Poetry', p. 81, pointed out that 'it is usage that regulates the laws and conventions of speech'. Both seem to be importance sources for RN's treatment of diction.

⁸⁰ See, e.g., Hobbes, *Leviathan*, pp. 114–16, who promoted the ideal of perspicuity as the whole of diction; hence, 'the use of Metaphors, Tropes, and other Rhetoricall figures, in stead of words proper', though 'lawfull ... in common speech ... yet in reckoning, and seeking of truth, such ... are not to be admitted'. See also Locke, 'Extemporè Advice', *Some Thoughts*, p. 320, for whom the 'Art of speaking well, consists chiefly in two things, viz. Perspicuity. And Right Reasoning'; hence, according to Locke, *An Essay*, pp. 243 and 508, when 'we would speak of Things as they are', ornaments (i.e., figurative speech and 'allusion' in language) 'insinuate wrong *Ideas*, move the Passions, and thereby mislead the Judgment; and so indeed are perfect cheat[s]'. So, too, [Baker], *Reflections upon Learning*, p. 52: 'our common eloquence is usually a cheat upon the understanding'. In short, these language purists were reviving the ancient rivalry between philosophy and rhetoric.

also of ornateness of any kind.⁸¹ For North, however, perspicuity is not the whole of diction, as the purists contend; rather, it is merely the avoidance of redundancy by the practice of abridgment ('contracting'),⁸² a practice that, for example, results in pithy statements of a general truth⁸³ or in notes entered in a commonplace book.⁸⁴

Following in the footsteps of Cicero and Horace, then, North argues against the purists by pairing ornateness and decorum as the two principal excellences or 'virtues' of style.⁸⁵ Although the term 'ornateness' does not occur anywhere in North's essay, he recurs to each of its three constituents—choice of words, figurative speech and construction ('framing')—the very constituents that the purist, John Wilkins, had criticised. For according to Wilkins, although the 'varieties of Phrases in Language may seem to contribute to the elegance and ornament of Speech', yet 'like other affected ornaments, they prejudice the native simplicity of it, and contribute to the disguising of it with false appearances'.⁸⁶ What is more, 'like other things of fashion', language becomes altered

...partly by new artificial *Compositions* [i.e., constructions];
partly by *enfranchising* strange foreign words, for their
elegance and significancy, which now make one third part of

⁸¹ For the purists, see *infra* RN, 'Of Etimology', ff. 26v, 37, 40–41v, where Nathaniel Fairfax is singled out, perhaps because, according to Croston, *Two Seventeenth-Century Prefaces*, p. x, he was so extreme that he confounds the purists' ideal of perspicuity. Note, however, that a number of purists, including Locke, were associated with the Royal Society, whose manifesto, written by Sprat, *The History of the Royal Society*, contrasts the purity ('Chastity') of English expression with the 'corrupt' metaphorical expression of some neighbouring countries.

⁸² See *infra* RN, 'Of Etimology', ff. 24, 33.

⁸³ I.e., maxims—adages, aphorisms, proverbs, sententia, etc.; see *infra* RN, 'Of Etimology', f. 49v. For a similar conception of perspicuity as succinctness of expression, see Horace, 'On the Art of Poetry', pp. 90–91.

⁸⁴ See *supra* Chapter 1 sect. 1.4.

⁸⁵ For these 'virtues', see D'Alton, *Roman Literary Theory*.

⁸⁶ Wilkins, *Essay*, p. 18.

our Language; and partly by *refining and mollifying* old words, for the more easie and graceful sound: by which means this last Century may be conjectured to have made a greater change in our Tongue, than any of the former, as to the addition of new words.⁸⁷

North does not mention this criticism of Wilkins. But he answers each of its points in his treatment of ornateness, for the first constituent, choice of words, pertains to rare words—terms of art that ‘professors’ use but that seem like jargon to those unfamiliar with a particular branch of learning.⁸⁸ Such words include ‘antique’ words or archaisms, ‘newfangled’ words or neologisms,⁸⁹ sonorous words and idiomatic expressions both native and foreign—for example, provincialisms, slang, pithy sayings and the like. All these varieties of rare words enrich language by enlarging ‘the confines of our speech’;⁹⁰ and foreign idioms, in particular, enable a communicator to express ‘things not expressible’ in his native language.

Although North devotes considerable attention to this first constituent of ornateness, he also includes scattered remarks about the other two constituents, one of which is figurative speech, a term that includes not only tropes but also figures of words and figures of

⁸⁷ Wilkins, *Essay*, p. 8.

⁸⁸ RN, *The Gentleman Accomptant*, pp. 7, 24, alludes to technical terminology ‘which is so foreign to the Apprehension of ordinary Persons that the very Jargon diverts them, who might hearken well enough to a lower Instruction, if it were in a plain *English* dress’. And RN, *The Musicall Grammarian 1728*, p. 97, points out that ‘no art is more enveloped in dark dialect, and jargon, then musick is, all which impedimenta I would have removed, that the access to the art and practise may be more recomendable and inviting’.

⁸⁹ For some of RN’s coinages (i.e., ‘Northisms’), see *infra* Part II. Glossary; see also the glossaries in recent editions of his writings listed *infra* References. Note too that in a number of his writings, RN recognises that a range of phenomena required technical terms, and he himself tries to supply some of them; see, e.g., RN, *Notes of Me*, pp. 149–51, for his attempt to find the appropriate term for the technique of violin-playing that we now call ‘vibrato’.

⁹⁰ Regarding the enrichment of language, see *infra* RN, ‘Of Etimology’, ff. 26v, 29v–30, 32, 33, 34, 40, perhaps echoing Quixote *supra* Chapter 1 sect 1.4 (p. 73).

thought.⁹¹ However, he uses the term in its most general sense to denote any device or pattern of language which renders meaning more comprehensive. Thus,

When occasion is[,] figures in speech must not be baulked, not [even] such as may be called simile, when something is like something that hath nothing to doe with each other. But when a word touching a knowne subject opens to the mind a spacious feild of variety and substances, which to express would fill an whole page, as the mathematitian's symbols, that [word] lays downe in a thumb's length, that which in solute speech would be monstrous as larg, and sometimes scarce capable of being so exprest.

As an attentive reader will recognise, North himself uses a number of different figures, though without describing any of them.⁹²

The third and last constituent of ornateness is construction ('framing'), the aim of which is to invest continuous speech or writing with the native justness ('justice') and 'beauty' of language. And this requires regard for correct syntax, the arrangement of words in due order so as to evoke the latent harmony of language—the internal 'tune' and 'time' of periods in sentences—and the combination of sentences into an organic whole. For when the syntax is 'just, and the periods tuned to the breath', language will move 'in limpid and connate periods and expressions', 'soft and easy', like 'westerne air'.

The three constituents of ornateness have regard to the formal elements of style, whereas decorum ('propriety') has regard to the conformity of such elements with the standard of polite usage, the usage of cultivated society. In the Roman theorists that North

⁹¹ See Lanham, *A Handlist*, pp. 130–32.

⁹² Elsewhere, Appendix A (f. 86), RN offers a conjecture about one consequence of the Reformation—that students of the law were encouraged 'to affect a polite clearness of language, both classick and vernacular [i.e., both past and present]; using termes of art, and figures but for necessity, when plaine expressions are not competent for their flights'.

follows, that standard resolves itself into moderation⁹³—the avoidance of any ‘needless extravagance in action, dress, and speech’. And this means finding a balance between the extremes of ‘nicety’, on the one hand, and ‘negligence’, on the other. As an example of ‘nicety’ or formalism, North touches on the ‘late’ improvements in speech which had been carried too far by the French. ‘For an extraordinary care of their periods, as if they were verses, to compose them exactly in time and tune, hath introduced a sort of stiffness or affectation’. As examples of ‘negligence’, he mentions a number of improprieties—ambiguities, barbarisms, circumlocutions, tautologies and, in particular, ‘ignorant and vulgar use’. For if diction is completely free to follow the ‘anomala’ of such use, ‘living languages change too fast and soon become little better then lost, so that in an age or two a man must goe to an antiquary to interpret his grandfather’s last will and testament’.

North, however, is not against change *per se*; rather, he is against doctrinaire change that is imposed either by ‘force of reason’ or by ‘utility’, as in the attempted reforms of Wilkins⁹⁴ and Charles Butler.⁹⁵ Although he admires the efforts of both reformers, his point is that without ‘prejudice and prepossession from use and custome’, their innovations could not (and did not) succeed, because ‘an habit of well doing is necessary’ to such reforms ‘as it is to all other practique excellencys, and that is not to be acquired, but thro a pedantick exercise of doing (at first) ill’. Hence, a speaker or writer should keep ‘close to the comon mode, improving, if it may be, rather than varying from it’,⁹⁶ because ‘all newfanglements, however speciously introduced, are aversions and cross to the designe of a favourable publique acceptance’.

⁹³ For the various classical conceptions of decorum, see D’Alton, *Roman Literary Theory*, pp. 116–40.

⁹⁴ I.e., his real character and philosophical language; see *infra* RN, ‘Of Etimology’, ff. 44–45v.

⁹⁵ I.e., his attempt to simplify spelling by introducing phonetic symbols; see *infra* RN, ‘Of Etimology’, ff. 42–43.

⁹⁶ So too in architecture, ‘it is prudence to vary as litle as may be, and to doe it with good reason’; see RN, ‘Cursory Notes of Building....’, *Of Building*, p. 20.

3.3. CONFUTING DOGMAS ABOUT THE LANGUAGE OF POLITICS

Having established his concern with the rhetorical basis of human communication, North turns next to the ‘peculiar’ ways that humans use language in government and law, subjects that will illustrate his conception of etymology in its enlarged (‘extended’) signification (ff. 51v–111v). But his argument is somewhat bifurcated, for it begins with a consideration of three topics:⁹⁷ first, polity ‘by nature’ and ‘by institution’ (ff. 51v–67); second, abuses of power—by law; by ‘strength of reason, which powers, for colour[,] call necessity’; by factions that inflame the passions of the generality (ff. 67v–77v); and third, the question, ‘what is the best form of government?’, in which North offers a brief assessment of the opposing positions taken by Robert Filmer and John Locke (ff. 78–83v).⁹⁸ And it ends with some critical reflections on the system of the common law, as well as an attempt to bring England’s legal past into the tradition, a tradition that dates from the twelfth century (ff. 84–111v).⁹⁹

The topic first assayed represents North’s response to reading the previously mentioned notebook of his brother John.¹⁰⁰ For among the several ‘designs’ there recorded, one was an intention to confute certain ‘dogmas’ of Hobbes concerning the language of English politics—that (in North’s words) ‘the state of nature is a state of war’; that ‘in the state of nature every man hath right to everything’; that ‘all right hath a beginning by pact’; that since ‘the magistrate’s power is derived from the people, for that reason a supreme

⁹⁷ The second and third topics occur in portions of the manuscript that have not been edited for reasons given *infra* Part II. Introduction to the Edition: Description of the Manuscript. Hence, they will not make part of my comment in this section.

⁹⁸ Filmer and Locke are represented as opposites (‘extremes’), the one arguing for an absolute monarchy, the other, for a republic. According to RN, although each man is right about his preferred frame of government, both are wrong about England’s frame, which, constitutionally, is a mixed monarchy—or, to use his words (unedited f. 79), ‘I may say neither hitts the mark as to places of a mixt nature, such as fitt a mixt government.’

⁹⁹ For this concluding part, see *infra* Chapter 3 sect. 3.4.

¹⁰⁰ See *supra* Chapter 1 sect. 1.3.

magistrate can do no wrong, or, as Mr Hobbes says, right and irresistible power are all one'; and that Hobbes's 'estimate of pure nature was to be taken from ... persons adult and educated in corruption and confirmed by practice'.¹⁰¹ Moreover, as part of his confutation, John North planned to append 'a discourse of natural justice among men, all laws positive whatsoever abstracted; that is, how according to right reason, men are bound to live together, if no pact or law of any kind had been ever established'.¹⁰² In attempting to fulfil his brother's intentions, Roger North confutes Hobbes in a set of five numbered 'Notes' or memoranda as follows.

Notes 1 and 2 (ff. 50–52), which do not mention Hobbes by name, seem at first to consist of hints to be further developed. But on a more attentive reading, both Notes may be understood as a response to two dogmas of Hobbes that were not on John North's list. The dogma concerned in Note 1 (ff. 50–51v) is Hobbes's definition of law as the promulgated command of sovereign power, a definition that restricts law to 'positive law' that is to say, statute law,¹⁰³ thereby excluding not only custom but also case law. In his first Note, therefore, North offers a rather perfunctory treatment of the terms 'natural law' and 'human law' that, at first, seems to echo the ancient distinction between nature (*physis*) and convention (*nomos*). For according to him, laws 'figuratively' styled natural are adapted to the unchanging (necessary) conditions of humanity; hence, they are comparable to universal principles in natural science ('gravity, fluidity, and vegetation'),¹⁰⁴ whereas laws styled human are 'artificial', that is to say, they are constructively devised for, and

¹⁰¹ RN, *Life/JN*, pp. 136–7. Hobbes, *Leviathan*, is the basis for the critique that follows; but Hobbes, *Dialogue*, published posthumously in 1681, contains more concise statements of some of the 'dogmas' in his earlier book.

¹⁰² RN, *Life/JN*, p. 132.

¹⁰³ Hobbes, *Leviathan*, pp. 312, 317; and Hobbes, *A Dialogue*, p. 71: 'A Law is the Command of him, or them that have the Sovereign Power, given to those that be his or their Subjects, declaring Publickly, and plainly what every of them may do, and what they must forbear to do.'

¹⁰⁴ This is Cicero's conception, according to Friedrich, *The Philosophy of Law*, p. 29.

adapted to the changing (arbitrary) conditions of humanity. Hence, as he afterwards indicates, human laws are comparable to prescriptions ('remedies') in medicine.¹⁰⁵

North then cautions that the twofold distinction of law into natural and artificial is not supernaturally imprinted on the mind but results from the experience of 'all men in all times and conditions'. For since infants 'bring onely a capacity [for motion] and not the notion into the world with them', legality—the notion of right and wrong—'grows up in men's consciences by sociable practises, which is their owne experience, or [by] teaching, which is the experience of others infused into them'. Moreover, because moral and civil actions are the subject of human laws, there is need for certain determinate natural laws by which 'all persons of mature reason and experience of life' may govern their own actions. His examples of such laws are: 'to condemne none without hearing', 'to keep covenants', 'to obey laws', 'to hurt no creature vainely', 'to refuse gratuitous aide to none', 'to deal with all men impartially' and that rule which is worth them all ('*instar omnium*') 'to doe as wee would be done by'.¹⁰⁶

As these examples indicate, the so-called natural laws are none other than the sceptic's maxims or rules of living. But, as North observes, although these and other such maxims are 'neither instituted, nor revocable by human power', nevertheless 'they must be referred to a sound judgment and right intention to declare and owne particularly what they are'. Recall, however, that according to his morality, an upright mind belongs not to a single profession like the judiciary or the clergy; rather, it belongs to all individuals who have attained specifically human qualities which, after birth, grow from a consciousness of bonds and duties, an awareness of the consequences of actions and a desire for knowing the truth.¹⁰⁷

Note 2 (ff. 51v–52), which consists of one paragraph only, concerns a second dogma of Hobbes that was not on John North's list—that to test the validity of legal rules, the standard of

¹⁰⁵ See *infra* RN, 'Of Etimology', f. 55 *et passim*.

¹⁰⁶ See also *infra* RN, 'Of Etimology', ff. 53v, 58v–59, 61, 66v, 98v.

¹⁰⁷ See *supra* Chapter 2 sect. 2.1.

comparison is statute law, not Coke's customary law.¹⁰⁸ North, therefore, raises the problem of conflicting standards by alluding to the classical debate about language noted previously.¹⁰⁹ On one side were the analogists, who took account of the origin and nature of language; but in case of doubt they had a standard of comparison by which to test the validity of a particular grammatical form, thereby rendering themselves immune from the caprice of 'irrational' custom. In the first part of his argument, this was the position of the language purist, Nathaniel Fairfax, who would not allow the use of 'exotic' or foreign idioms, because his standard of comparison was the Anglo-Saxon dialect.¹¹⁰ But here North suggests that the analogists also include certain unnamed 'antiquarys' who 'discover passages' in a foreign history or legal code that resemble '(tho faintly,)' some English usages, and then 'pronounce strait, that the latter is immediately derived of the other'.¹¹¹ But, he goes on, 'It is impossible for the antiquary to distinguish when customes are originall and when traditionall'.

With this statement North places himself on the other side of the debate, that of the anomalists, who took account of existing usage as the chief arbiter of language and of the possibilities of development in a living language, the very position he had taken in the first part of his argument. Indeed, in his preliminary definition of the term 'etymology',¹¹² he provides the first hint of this position by writing that the interpretation of a compound word by tracing its root ('originall') does not always hold, because custom imprints not only meaning but also phonology and orthography, so that no evidence of

¹⁰⁸ Hobbes, *Leviathan*, pp. 316–17, where he opposed Coke's doctrine of the 'Artificiall perfection of Reason' to his own doctrine of the 'Artificiall Man the Common-wealth, and his Command, that maketh Law'; see also Hobbes, *Dialogue*, pp. 55, 62, and *supra* Chapter 2 sect. 2.4.

¹⁰⁹ See *supra* Chapter 3 sects. 3.1 and 3.2. See also D'Alton, *Roman Literary Theory*, pp. 39, 40–1, 79–80.

¹¹⁰ See *infra* RN, 'Of Etimology', ff. 40v–42.

¹¹¹ RN's statement is too cryptic to determine with any certainty the identity of his 'antiquarys'; but see RN, 'Of Etimology', f.46n.

¹¹² I.e., in unedited f. 1v; see also *infra* RN, 'Of Etimology', ff. 5v–6.

the root from which the word is derived remains. And, later, in considering the original paradigms ('primevall originalls') of the comon law, he reiterates his anomalist position when he writes: 'they are so farr from our reach, that instead of resolving our moderne usages by evidences of antiquity, wee have nothing but what is moderne to help us at guessing at antiquity'.¹¹³

In Note 3 (ff. 52v–55v) North turns to the topic of polity by nature and, hence, to the conjecture of Hobbes, who is now named, about the origin of political rule and law. Since North recognises that all origins must be conjectural, that is to say, tentative hypotheses for putting cases, he utilises Hobbes's postulate—that humanity's natural state is one of mutual hostility and unlimited right¹¹⁴—as a foil to his own opposite postulate of natural sociability.¹¹⁵ Behind the two postulates, however, are traditions from classical literature regarding primal people or people in a so-called 'state of nature'. The Epicureans, for example, saw the life of primal people as nasty, brutish and short and as slowly emerging to civilisation; and this has led some recent critics to treat Hobbes's postulate as evidence of his supposed Epicureanism.¹¹⁶

The idealising of primal people began with the Homeric literature, the very literature that Hobbes translated and whose translation North praises in the first part of his argument,¹¹⁷ perhaps somewhat ironically. For it is he, not Hobbes, who draws his

¹¹³ See *infra* RN, 'Of Etimology', ff. 100v–101.

¹¹⁴ This is what Schneewind, *The Invention of Autonomy*, pp. 70–73 *et passim*, called 'the Grotian problematic'—that there is a tension between our social and unsocial dispositions or needs that leads to discord. Not only Hobbes but also the other modern natural lawyers sought solutions to this Grotian problematic.

¹¹⁵ According to RN, *Life/JN*, p. 136, JN described the natural state as one of 'pure amity and innocence'. But this is not the same as RN's natural state, as will appear.

¹¹⁶ As a result of this supposition, critics have overlooked different sources for Hobbes. For example, despite Cicero's hostility to the Epicureans, he shared their anti-primitivism; see Cicero, *In defence of Sestius* 42.91–2; see also Ferguson, *Utopias*, p. 22. Note, too, that Hobbes's physics is not atomistic (i.e., Epicurean); see, e.g., Kassler, *The Beginnings of the Modern Philosophy of Music*, pp. 10–15.

¹¹⁷ See *infra* RN, 'Of Etimology', f. 34v.

postulate from the tribal state (*ethnos*) depicted in the *Illiad*, in which primal people are social animals with communal law and morality.¹¹⁸ As for the primal people themselves, however,

...these are out of our pale, that look in other times, and other parts of the world, among the uncultivated generations, that often passed to and fro, and overturned states and empires that lay in their way. Wee have litle reason to ascribe to such any formall prejudices of law, but rather suppose them to act more upon nature, than institution. For savages are not accustomed to deal with formed articles. But on the other side[,] wee must allow them so much experience of rule and order, as is necessary for the subsistence of their societys; and this tinted with their breeding, however impolite, whereby they know the consequences of agreement and of disagreement. Els wee could not argue any thing from their supposed actions, more then from those of babes of a month old, or such as Mr Hobbs supposeth his nubigenall [i.e., imaginary] men to be, ignorant of humane nature and affaires, and impotent of all experience of life. A sandy foundation of policy....

Rejecting, then, the fiction of primal people, North turns to historical fact—the ‘Gothic’ people or Angles and Saxons who brought Teutonic customs into Britain.¹¹⁹ Although uncultivated ‘rabble’, these ‘first planters’ (according to North’s representation) were naturally sociable. For they had a consensual method of judicature by voting the law in assembly;¹²⁰ and they were bound in conscience to natural justice, an obligation that is antecedent to all particular duties such as agreements or contracts. Like the primal people in the *Illiad*,

¹¹⁸ See Ferguson, *Utopias*, p. 13.

¹¹⁹ According to Baker, *An Introduction*, p. 2, the Anglo-Saxons were the first inhabitants ‘of whose legal usages anything is known, because they were the first to introduce written laws’. See also RN, ‘Cursory Notes of Building....’, *Of Building*, p. 65: ‘the Saxons, that is a German rabble, overcame us, and wee were turned to their manners’.

¹²⁰ This is the root of a later growth—‘a well regulated commonwealth’—presumably, the mixed constitution, which includes elections and the jury system and in which parliamentary legislation required the separate consent of king, lords and commons; see *infra* RN, ‘Of Etimology’, ff. 54, 55v.

therefore, North's first planters brought with them a traditional moral order, which is the *basic* constitutional order—an identity within change.¹²¹ But once a society is planted and 'some eas begins', 'fears vanish'; and as people begin to feel more secure, 'lust and luxury grow up', thereby providing 'avarice with ambition' to have 'a clear stage'. Then enter 'faction and disorders', from which, 'as fair flys out of dunghills, proceed the ordinary declared rules of living wee call [human] laws, and magistracys as well for executing them, as conducting the state of the community'. Human laws, therefore, are not 'so much to meliorate the state of nature but as plaisters to heal its corruptions'. For 'magistracy and laws are rather phisick, then diet to a people, the occasion of which is not from any necessity of nature, but from abuse of plenty'.¹²²

In Note 4 (ff. 56–61v) North confutes the two postulates that are the 'foundation' of all of Hobbes's dogmas—first, that the state of nature is a state of war in which all things are lawful; and second, that right and wrong commence only by contract. According to the first postulate, because natural disorder is distributed equally, primal people are 'more undetermined, thoughtless, and impotent then children'. But North points out that even though children are supposed to be 'covetous and ravenous', yet they love society and are 'kind and communicative' not only to their equals, but also to cats and dogs. Moreover, historical experience teaches that 'warr and peace reign as it were by accident'. Hence, it cannot be claimed that war is 'from a direct [radically corrupt] tendency of nature in men',

¹²¹ During the so-called 'baroque' period (1600–1750), critics in many different domains of knowledge were concerned with the problem of identity and change, unity and variety. In the philosophy of law, this concern was sometimes expressed by recourse to different versions of the Ship of Theseus metaphor—even though the planks are replaced, the ship remains the same. See, e.g., Selden, 'Notes', pp. 17–18 (a ship version), and Hale, *The History of the Common Law*, pp. 18 (an ocean version), 40 (a ship version).

¹²² Cf. Pufendorf, *De officio hominis et civis*, p. 19, who warned that the dictates of natural reason should not be treated 'like the prescriptions of physicians for the regimen of health'; instead, they should be treated 'as laws; since these of necessity presuppose a superior, and in fact one who has actually undertaken the direction of another'.

because war enters like ‘all corruptions, in time, and consequentially, from particular men’s lusts and avarice, and those raised by accident and education’.

According to Hobbes’s second postulate, the political state is based on a contract by which people voluntarily surrender their natural freedom in exchange for protection offered by the sovereign power, whose laws they are ready to obey. Law, therefore, begins only after a contract has been made; and since law has force only as the will of ‘an irresistible power’, ‘obligation determines with the power’.¹²³ But, North responds, all contracts require an antecedent natural law—‘to keep covenants’—so as to make the agreement ‘any thing or nothing’. For without that rule of living, a person may decide to govern himself not by his bargain but by his interest. Indeed, without that rule, ‘brutes governed by appetite are the more rationall creatures’, for it is ‘more base then brutall to contract and at the same time profess a designe’ either to keep or not to keep one’s word, ‘as the account turnes’. If Hobbes says that obedience to law is necessary for the subsistence and common good of society, then North agrees. Indeed, one of his maxims states as much. But, as the next Note will clarify, Hobbes’s postulate dissolves all laws, whereas North’s principle—that laws themselves are agreements—maintains them.¹²⁴

The final Note 5 (ff. 62–67) on judicature—the administration of justice—concerns Hobbes’s dogma that laws are prior to justice and that the sovereign power is prior to both law and justice.¹²⁵ Hence, North, begins by differentiating judicature and law, the latter of which is ‘but an emanation of the other, when it declares by what measures men shall be judged in certein cases’. He also points out

¹²³ According to RN, *Life/JN*, p. 136, JN had discovered an inconsistency in Hobbes’s doctrine that ‘all right hath a beginning by pact’, for ‘if it be true that men are bound by pact, that truth must be antecedent to pact, so that if it be not admitted in the first place that pacts bind, it is impertinent afterwards to enter into any’.

¹²⁴ Cf. Selden, *Table Talk*, p. 73: ‘Every Law is a Contract between the King and the People, and therefore to be kept.’

¹²⁵ For a clear statement of this position, see Hobbes, *Dialogue*, pp. 72–3.

that judicature 'may subsist without positive law', as in the consensual method of the Angles and Saxons described in Note 3, where agreements are voted in the assembled company as particular occasions require. Hence, even in a state of nature no person is 'in a strick't sence' free, as Hobbes had claimed.¹²⁶ For although no sovereign power may be in possession, the 'company is allwais at hand to injoyne and compell the rest'. North allows, with Hobbes, that freedom consists in 'a security of being protected from the inordinate insults of others' by some 'just and irresistable power'. But this does not mean that he advocates 'the caus of absolute power'. Indeed, he expresses the wish that 'there were no such thing in nature as absolute power of any man or number over the rest, and that the world had such morall perfection as not to need it'.

Since, however, 'it is incident to that great guift of heaven to men, free will, that it should appear to us distinguish't in the uses and abuses of it', 'it is permitted to some to will and act without contradiction, upon trust that they coerce the devious wills of others'. And this 'priviledge' is lodged in the legislative power, 'whose will is a law to others'. And even if 'some expedients are found to temper power, by changing hands', it still is necessary that 'somewhere or other' there must be a sovereign power. But without distinguishing whether 'power be absolute here or there, in the whole or in part',

...no terrene majesty can absolve it from obeying naturall justice, which requires the observance of positive laws, after they are enacted, and where they are found unfit, to alter them justly and regularly. So that altho positive law be but the will of men in power, that will ought to follow naturall equity, which every experienced person's senses tell him is his duty; and no pervers willfullness, tho not outwardly resistable, can discharge it.

¹²⁶ Hobbes, *Leviathan*, p. 335: 'Nature gave a Right to every man to secure himselfe by his own strength, and to invade a suspected neighbour, by way of prevention; but the Civill Law [i.e., statute law] takes away that Liberty'.

Since the ‘Hobbian doctrine’ fails to distinguish between law and equity, it is ‘a fallacy’.¹²⁷ For law ‘truely speaking’—statute law—is the will of power; and equity—natural justice—is ‘the eternall and immutable rule by which the will of power is, or ought to be, guided’. What is more, there is no difference between ‘the duty of a sovereign power with respect to government, and the duty of a private person in his own dealing; because law and politie apart[,] every man is supream governour of all his owne actions’.

What, then, gives law its binding force? An initial answer to this question is to be sought in North’s coupling of a consensual method of judicature—voting the law in assembly—with a conscience of obligation that is prior to agreements. For although all laws, as agreements, derive their obligatory quality from the basic constitutional order that rests on communal consent, yet what ought to be done in the legal order is equated with natural justice, the equitable spirit that Coke identified with the ‘life’ of the law.¹²⁸ Recall, however, that North combines scepticism with fideism, so that for him obligation is ‘coevall and coimutable with’ humanity’s state and condition, that is to say, ‘coeval with life itself’, because ‘he that hath a life lent him is a debtor for all the days of his life’.¹²⁹ Hence, the real source of obligation is God, the giver of life and the final judge after life ends.¹³⁰ This is the meaning behind North’s allusion to a contentious passage in Hobbes’s *Leviathan* concerning

¹²⁷ Hobbes, *Leviathan*, p. 212, where equity is defined as ‘the equal distribution to each man, of that which in reason belongeth to him’; hence, it belongs to distributive justice and concerns the laws of property (*meum* and *tuum*).

¹²⁸ See *supra* Chapter 2 sect. 2.4. and *infra* RN, ‘Of Etimology’, ff. 66v–67, 97, 98v–100v. Cf. Selden, *Table Talk*, p. 49: ‘if there be no Justice in the Law, ’tis not to be obeyed’. According to RN, *Life/JN*, p. 137, Hobbes’s ‘scheme of right’ depended upon ‘all the force of laws and agreements in the world’, so that ‘if any were made inconsistent therewith, he [JN] made no scruple ... to say there might be force, but no obligation’.

¹²⁹ See *infra* RN, ‘Of Etimology’, f. 50v; see also RN, *Life/JN*, p. 137.

¹³⁰ As hinted *infra* RN, ‘Of Etimology’, f. 67: ‘Power [legislative] is the fountaine of law, but not of justice.’ Cf. Selden, *Table Talk*, p. 74, that without God ‘nothing else can bind’; hence, the maxim, *ibid.*, pp. 74, 89, to keep faith (*servare fidem*, *fides est servanda*, *fides servanda*).

Psalm xiv.1—‘The fool hath said in his heart, There is no God’—because the problem the fool poses is the absence of any appeal to punishments after death.¹³¹ And this also is the meaning behind his statement, quoted previously, that good and evil are founded upon principles ‘superior to all men’s opinions or actions, and fall not in the district or arbitrament’ of humans.¹³² For North, therefore, the key duty of every person’s life is ‘to keep covenants’—with God, with our neighbours and with ourselves—because ‘all humane peace, society, safety of life, and property, and in short[,] all morality depends on this principle, without which a citty is a den of theives, and literally *homo homini lupus*’.¹³³

3.4. BRINGING EVIDENCE OF PAST USAGE INTO THE LEGAL TRADITION

Having dispensed with Hobbes’s ‘dogmata’ in a set of five objections, North’s way is now clear for a consideration of the common law (ff. 84–111v), beginning with law making (ff. 84–96v). For this is the means by which the basic constitutional order—the identity within change posited in Note 3—is added to, interpreted and limited according to particular wants and needs of a people. Hence, he repeats briefly what he put more fully in that Note, that with ‘rude’ people the invocation of law is from custom in the form of communal ‘reason, or well-weighed opinion grounded on the laws of nature, that is, the common utility of the people’ as ‘adapted to their circumstances then’. But he now adds that when positive law ‘grew up and became law declared in the name’, the ‘nice criterium’

¹³¹ Hobbes, *Leviathan*, pp. 203–6. See *infra* RN, ‘Of Etimology’, f. 51, where he places Hobbes among the ‘debasers’ of morality; see also RN, ‘Reason’ (UK:Lbl) Add MS 32526: ff. 120–123v (middle period).

¹³² See *supra* Chapter 2 sect. 2.2. What is within human ‘district or arbitrament’, however, is judgment of right and wrong.

¹³³ For Locke, according to Dunn, *Locke*, pp. 57–9, 84, the foundation of all morality is belief in a god, the key duty of every person is to seek one’s own salvation; and God’s punishments are of decisive importance, because they are threats which no one can rationally hope to avoid.

of custom gave way to precedent, where law is referred to judicial construction and usage, for that is not 'so obnoxious to uncertainty and dispute'. This new standard is no breach upon the system of the law, 'as when by changes of times and manners, judges are forc't to make rather than declare law',¹³⁴ which is the case 'when all law is positive, and not referred to construction and usage'. For 'in things of common use and practice', judicial construction becomes, from reiterated precedents, 'equivalent to a positive declared law'.

Since North here stresses that custom and precedent are the arbiters of legal practice, it would seem that his consideration of law making represents the original extension of his argument from language and its modes to legal language and its modes. For he now examines more closely the nature of customary law, so as to answer two objections made against it—apparently by Hobbes.¹³⁵ The latter, who is not named, argued not only that an unjust judgment of a subordinate judge cannot be 'a pattern of Judgement to succeeding Judges' but also that men's judgments 'have been perverted, by trusting to Precedents'.¹³⁶ In addressing this objection, North points out that if judges should abuse their authority, it is 'in vain to attempt mending the matter by tying up their hands, whereby instead of not doing wrong, they cannot do right'.¹³⁷ Rather, it would be best 'to question them for the abuse, which will make their successors more

¹³⁴ Cf. Bacon, 'Of Judicature', *Essays*, pp. 170–74, p. 170: 'Judges ought to remember that their office is *jus dicere* [to expound the law], and not *jus dare* [to make the law]. But Bacon notwithstanding, judges do make new law (see below).

¹³⁵ Hobbes, *Leviathan*, pp. 165–6, supposed that ignorance of 'the causes, and originall constitution of Right, Equity, Law, and Justice' disposed people to adopt 'Custom and Example', i.e., precedent, as a false rule of action, and 'Example', which 'the Lawyers ... barbarously call ... Precedent', as a false measure of justice.

¹³⁶ Hobbes, *Leviathan*, pp. 323–6, who took a passage in one of Coke's commentaries concerning the meaning of a written law as evidence for his claim.

¹³⁷ Perhaps an allusion to a maxim popularised by Hale—*stare decisis*: (Lat.) to stand by decisions; see *infra* RN, 'Of Etimology', ff. 88v, 97. According to Baker, *An Introduction*, pp. 196–201, Hale's maxim did not mean that precedent had binding force (a doctrine that appeared much later), because it was recognised that a judge sometimes makes mistakes, so that succeeding judges were not bound to repeat an error in similar cases.

careful'. He allows that law founded on tradition can fall under the same inconsistencies ('inconveniences') as positive law. But when this happens, the legislative power interposes 'expedients by statutes, as occasion is; which course preserves the authority of the law as not alterable, but by the supream power'.¹³⁸

For North, therefore, although custom is creative of law, conscious law making is judicial as well as legislative. And history has shown him to be correct, for as J. H. Baker has pointed out, law change has been effected sometimes through 'barely perceptible modifications and clarifications from case to case' and at other times 'swiftly and deliberately, through bold judicial decisions or reforming legislation'.

But never has the law been exempt from the ceaseless alteration to which all human creations are subject. Even the distinction between judicial and legislative change has not always been as fundamental as modern theory supposes. It is one of degree. The courts do make new law, but they do so within the framework of common-law reasoning, whereas a sovereign legislature may legislate irrationally or unreasonably.¹³⁹

For Hobbes, however, law making is legislative only, that is, 'real' law is statute law. Consequently, customary law exists merely by the tacit consent of the sovereign power and is neither hallowed by time nor by the consent of those who are subject to it.¹⁴⁰

It is this dogma which informs a second objection against law founded on tradition—that since it is subject to change, custom and precedent are 'not in reality, but in pretension only, the essence of the common law'. In addressing this objection, North points out that

¹³⁸ As RN elsewhere points out, Appendix A (ff. 85–86v), the same remedy is used when the law becomes 'infected with windy maxims, or empty reasonings' of judges, for then parliament—the grand assise of the nation—'innovates' in taking away such 'senceless cavills'.

¹³⁹ Baker, *An Introduction*, p. 196, who added: 'Yet parliament has not actually acted in a despotic manner.'

¹⁴⁰ Hobbes, *Leviathan*, p. 330.

these ‘seeming’ changes of law are not ‘defects’ but consequences of ‘fact’, namely, ‘humane frailty and mutability’.¹⁴¹ Moreover, no law anywhere in the world had ‘commencement by regular and solemn institution’, because all laws, not just the English common law,

...are such as have growne up out of old customes and moderne occasions. But at length these fortuitous beginnings grow strong, and become revered for their authority, and in the style of ancient laudable customes, are sacred, as any laws [that] can be made. But yet they shall ever goe on in change, upon like occasions, as at first produced them.

To confirm this statement, North provides multiple instances: first, from the civil law of Rome and the law of nations, supposedly founded on unchangeable nature, not tradition; and, next, from the customs in Turkey and Sparta, where the rate of change depends on ‘methods of living’. For as these methods are more or less ‘flux and revolving’, so people will follow ‘in manners, laws, and language’. But these instances also confirm that change is ‘in truth the advantage and perfection of the common law, because it is accommodated to the flowing alterations of affairs, which no positive law can be’. Moreover, change does not impeach the verity of law being founded in custom, because change rests not in a contradiction between ancient and modern law but in ‘dropping the more antique courses’. And this means that ‘a knowledg of the ancients practis of the law is needfull’ not only for ‘the right understanding of our statute book’ but also for ‘the knowledg of the comon law’, because later practice is ‘not clearly understood without connecting it with’ earlier practice, so that ‘the changes with the reasons may appear’.

¹⁴¹ According to RN, *Notes of Me*, p. 170, ‘the world is variable and laws have not their patent of exemption’, for they belong to ‘men, and their ways, which allwais are innovating, and fashion will take place with the one as well as with the other’. Hence, RN, *Life/FN*, p. 273, ‘in process of time as well from the nature of things changing, as corruption of agents, abuses will grow up, for which reason the law must be kept as a garden with frequent digging[,] turning[,] weeding etc. ... [because that] which in one age was convenient and perhaps necessary, in another becomes an intolerable nuisance’.

These statements are a consequence of North's definition of 'the comon law of England' as 'the generall custome of England, unwritten, and derived by tradition from one age to another', a definition that leads him to the problem of the 'originalls' of the common law, that is to say, the original paradigms (ff. 97–101v). Initially, North puts forward as probable ('reasonable') a supposition put by 'a noble chief of the law'—Matthew Hale—that unwritten customs had a beginning in statutes, although the statutes are no longer extant.¹⁴² But, as North goes on to suggest, 'there is no need to strain so hard as to bring the whole nation together in parliment to find a foot for them; because in ancient times petty lords made laws that held in their socks'.

The figures of speech in the sentence just quoted refer to the original paradigms of the law—statutes (Hale's foot) or custom (North's socks). Despite these differences as to form, however, both men stress the importance of function—representation in assemblies. For according to Alan Cromartie, parliament was the name that Hale gave 'to every *recorded* assembly that had legitimately made or modified the law'.¹⁴³ And because North's 'first planters', the Anglo-Saxons, were responsible for introducing the first written laws, their consensual method of judicature by voting the law in assembly could be interpreted as a parliament in Hale's sense.¹⁴⁴ Indeed, North seems to suggest that his and Hale's explanations are complementary, because the basic constitutional order—the identity within change—develops gradually through changes in both custom *and* statute, thereby accommodating itself to changes in a society.¹⁴⁵ What is

¹⁴² According to Grey in Hale, *The History of the Common Law*, p. xxix, Hale's favourite explanation was that lost statutes are the source for changes not accounted for by known legislative acts; see Hale, *ibid.* pp. 39–46, especially pp. 44–5.

¹⁴³ Cromartie, *Sir Matthew Hale*, p. 50 (italics mine).

¹⁴⁴ See *supra* Chapter 3 sect. 3.3.

¹⁴⁵ Selden preferred this conception to that based upon the assumption of immemorial custom, on the grounds that it provided a better explanation of the legitimacy of appropriating one set of precedents and not another; see Christianson, *Discourse on History, Law, and Governance*, p. 111.

more, North also brings Cicero and Coke into his assay, when he stresses that in order for legal usages to live and not to become obsolete and die, both custom and statute must be reasonable, that is, consistent with natural justice.¹⁴⁶

North then returns to his anomalist position, described previously, that although the common law had ‘some plausible comencement, tho wee know not how nor when’, ‘wee have nothing but what is moderne to help us’ conjecture about antiquity.¹⁴⁷ To facilitate this guessing, he provides what he had promised at the outset of his essay (f. 4v)—a ‘petite specimen’ or ‘speculative retrospection’ concerning ancient usages (ff. 101v–111v),¹⁴⁸ which he divides into four stages: (1) the ‘aboriginall or Brittish’ (before CE 42); (2) the Roman (CE 43–409); (3) the ‘German’¹⁴⁹ (410–1065); and (4) the Norman (1066–1215). Since these four stages are prior to the time when ‘necessary learning’ emerged during the reign of Henry II, North recognises that the English common law is a product of the twelfth century, which implies that, for him, modern usages began then.¹⁵⁰

As sources for the history of the first stage, North rejects the fables of the poets.¹⁵¹ He also admits that he once doubted whether customs from that stage would survive ‘so as to have any share in our comon law’, especially since authors ‘even of history’ had dismissed

¹⁴⁶ See *supra* Chapter 2 sect. 2.4.

¹⁴⁷ Hale, too, was sceptical about remote origins; see Grey in Hale, *The History of the Common Law*, p. xxvi, and Hale, *ibid.* p. 39.

¹⁴⁸ I.e., promised in unedited f. 4v.

¹⁴⁹ I.e., Saxon and Scandinavian (‘Dane’).

¹⁵⁰ See RN, *A Discourse on the Study of the Laws*, p. 40, where he states that ‘for the [modern] history of the law, its rise is to be taken from *Glanville*’, i.e., the twelfth-century treatise so-called, for which see Hall (tr.), *The Treatise ... called Glanvill*.

¹⁵¹ See *infra* RN, ‘Of Etimology’, ff. 101v, 103. Note that in 1607 Selden subverted the traditional (fabulous) derivations of royal rule in Britain from the sons of the Trojan refugee Brutus, ‘thereby undermining the credibility of British poets as sources for the history of the ancient Britons’; see Christianson, *Discourse on History, Law, and Governance*, p. 14 *et passim*.

such customs as nothing more than old wives' tales. But he resolved his doubt on the grounds that

...mankind are formed by education, and so tenacious of the customes and usages they have lived under, that it is easier to extirpate the whole race of them, then to alter their humour [i.e., habitual disposition of mind]. And so farr as they happen (like beas fighting) to coalesce with their enemyes[,] they shall proportionally carry in of their customes and language to be blended in the comon stock.

He therefore concluded that it was indeed probable that many customs have been 'lett downe even to us, thro all those dismall and prodigious metamorfoses, this nation hath undergone'. And even if no 'direct evidences' of such customs are to be found, 'perhaps historys, or politique writers of other nations cotemporaneous, may afford some grounds for curious conjecture or reflection'.

As the memoranda concerning each stage indicate, North is less concerned to write an historical tract than to encourage others to take up the task by providing some educated guesses and by drawing attention to subjects for investigation. So in spite of his claim that the original paradigms of the common law are undiscoverable, he clearly believes that living or vernacular usages from the twelfth century to his own time would find illumination from a critical inquiry into whatever remains of 'the monuments of antiquity' so as to connect ancient usages with modern ones. Hence, at the close of his speculative retrospection, he seeks to encourage 'natives' in the law to undertake such inquiries, for only such 'can write tollerably concerning it'.

Some of the difficulties North had in writing his pre-history are indicated in a letter to Hickes, dated 12 October 1705,¹⁵² in which he queries:

Had not the very style, comon-law, a begining long after the [Norman] conquest? It is not found in any of the old books,

¹⁵² (UK:Ob) MS Eng. Hist. b. 2: f. 222–223v, from which the quotations following are taken.

and first [appears] in the year books, [as] *lay-comune*: And seems to me to referr to the king's justice; for when men are told they must sue by originall [writ], it is say'd, sue at comon law. What the judges often say, the custome of every place is the comon-law of that place, seems to me inconsistent, for comon-law must relate to all the nation; as to say the custome of a burrough, is the law of England of that burrough, is a sort of nonsense. I am inclined to thinck that however the conquest at first pleased to allow the Saxon-law, Dane-law and Mercian-law[,] ... [William I] stopt them afterwards ..., having created his courts where people were to have originalls for all civill causes returned and be tryed for all offences, after one comon law, which should be the same to all.¹⁵³

As for 'the great gapp' from the Norman conquest to the twelfth century, he laments that, at his age, he is incapable of understanding the old Norman and Saxon tongues. But the one ray of light is 'Glanvile',¹⁵⁴ the justiciar under Henry II and supposed author of 'the first essay of its kind on English law'.¹⁵⁵ This author, according to North, is 'a crittique to porpose, that can collect a sceme of law' out of previous scraps. Moreover, his book is 'very intelligible and in very good order; so that I would not desire a fairer representation of the law of any age or country, to satisfye my curiosity, then is found there, as it stood in England, temp. Henry 2'.

North, therefore, 'pitcht upon Glanvile as a text', and 'for evening exercise' began 'to translate it, with notes added', so as 'to collate the law of that age with the Saxon [law] ... and thence to draw forth the alterations and innovations of the [Norman] conquest'. For he was 'fully satisfied that this text of Glanvile' not only is competent to help a researcher but also to furnish one that is capable 'to give a full and entire history of all our cheif law-places from times, as well before the compiling it, as since, and so downe to our time'. From this statement it might be inferred that North intended to

¹⁵³ For some of RN's 'second thoughts' on these and related problems, including the Norman conquest, see *infra* Appendix A.

¹⁵⁴ I.e., Glanvill; see *infra* RN, 'Of Etimology, ff. 102, 109, 111.

¹⁵⁵ Hall (tr.), *The Treatise ... called Glanvill*, p. xxiii.

carry his 'speculative retrospection' into the modern period—the period from the reign of Henry II to his own day. But it seems that he lacked confidence to do so, for he lamented, 'where is the shoulder for such a weight, as the comon law hath no Gotofreds,¹⁵⁶ nor Hickses'?

Eight years later, North's rhetorical question was answered when Mathew Hale's *History of the Common Law of England* was published posthumously in 1713 without his name and then reprinted in 1716 with his name attached.¹⁵⁷ It is to be noted, however, that the latter's title is somewhat misleading, because the *History* proceeds only through what Hale regarded as the formative era—the twelfth and thirteenth centuries. Even so, Charles Grey has described this work as 'the first general history of the common law',¹⁵⁸ whereas J. H. Baker has qualified this description by acknowledging that although Hale

...made considerable use of history, ... he was not truly a historian. The old records which he used were a guide to the present, when properly understood. His principal achievement was that he was able to organise and present this arcane material in thoughtful and analytical treatises marked by the clarity of their literary style.¹⁵⁹

W. S. Holdsworth drew attention to another feature of Hale's *History*, when he described it not only as the first to be written but also as no more than a sketch, though a very able one, constructed as

¹⁵⁶ I.e., critics like Denis Godofroy; see *infra* RN, 'Of Etimology', ff. 92, 93.

¹⁵⁷ There is no evidence that RN was familiar with, or indebted to Hale's *History*. A more likely source would seem to have been Selden, 'Notes', pp. 1–51, especially pp. 15–18, concerning which see Christianson, *Discourse on History, Law, and Governance*, pp. 56–63. In the first edition of 1616 Selden was not identified as author of the 'Notes', and this may account for RN's silence in 'Of Etimology'.

¹⁵⁸ See Gray in Hale, *The History of the Common Law*, p. xix. According to Baker, *An Introduction*, p. 190 n.51, a comparison has yet to be made with the autograph manuscript in the Clark Library, Los Angeles.

¹⁵⁹ Baker, *An Introduction*, p. 190.

a series of essays, ‘some of which are united to others by a chronological thread’.¹⁶⁰ Here, then, is a hint of the continuing influence of legal common placing, for although North’s pre-history is an even briefer and more informal sketch than Hale’s *History*, it too may be described as a series of essays united by a chronological thread.

3.5. SETTING A PRECEDENT FOR ‘THE MUSICALL GRAMMARIAN’

North himself never realised the aim of prosecuting the ‘cours of observing the history of the law downe to our own time’.¹⁶¹ Nevertheless, his critical reflections on the relationship between language and law contributed to a rather surprising result, when towards the end of his life he reworked a number of his writings with a view to placing them into the hands of his son Montagu.¹⁶² Among these writings was a third and final version of his philosophy of music, which he revised from previous drafts into a more structurally and stylistically formal work.¹⁶³ This final version, completed in 1728, begins with a ‘phisicall account of sounds, which is the foundation of the whole’,¹⁶⁴ and concludes with an appended essay, ‘The Musicall Grammarian’, in which North seeks to demonstrate the probability of an unstated general principle—that music is the invention of humans and a representation of their changing history (‘times’) and customary practices (‘manners’). But this is not the only similarity to ‘Of Etimology’, for like that ‘familiar essay’, ‘The

¹⁶⁰ Holdsworth, *A History of English Law*, vol. 6, pp. 585–7. Heward, *Matthew Hale*, pp. 151–2, tentatively suggested that the book may have been written for the benefit of law students and provided some internal evidence that seems to support his case.

¹⁶¹ See *infra* RN, ‘Of Etimology’, f. 111v.

¹⁶² See Chan in RN, *The Musicall Grammarian 1728*, pp. 55–6.

¹⁶³ See Kassler in RN, *The Musicall Grammarian 1728*, pp. 3–50.

¹⁶⁴ RN, *The Musicall Grammarian 1728*, p. 88, referring to his ‘Theory of Sounds’, for which see NP 3, pp. 48–178.

Musicall Grammarian' has two parts, each part with a separate title page and an 'Advertisement'.¹⁶⁵

North describes the first part—the grammarian proper—as 'a scientifick essay upon the practise of music', that is to say, music which is still living or vernacular. And his chief aim in this part is to enter 'as an interpreter, and after the example of a French author, who wrote a grammer tituled—Generale et Raisonee'—the so-called 'Port Royal Grammar'.¹⁶⁶ For grammars that 'prescribe rules' leave 'intelligences to more filosoficall undertakers', of which North is 'content to be listed', since his aim is 'to discover the common principles upon which all depend, and from thence to resolve all that seems misterious in musick, to the end that learners, and other persons that are curious may understand the art'.¹⁶⁷

Because North's concern is the rhetorical basis of human musical communication,¹⁶⁸ he draws on grammar, rhetoric and logic, the same three branches of learning that enabled him to organise his critical reflections on diction in the first part of his 'familiar' essay, 'Of Etimology'. But in the grammarian proper (the 'scientifick' essay), the first branch is represented by musical phonology and orthography with suggestions for their reform, whereas the second branch is represented by musical 'invention'—the choice of passages; the use of musical figures for expressing 'all kinds of actions, passions, buisnesses, and affections';¹⁶⁹ and the construction of these elements into an organic whole that is not only syntactically

¹⁶⁵ For the c.1726 version, as well as for drafts and fragments, see *NP* 3, pp. 2–47.

¹⁶⁶ RN, *The Muscill Grammarian* 1728, p. 97, referring to *Grammaire générale et raisonnée*, published anonymously (1660, 2/1664, 3/1676, 4/1697, 5/1709) but written by Antoine Arnauld and Claude Lancelot at the abbey of Port Royal. The first English translation appeared in 1753; but according to Michael, *English Grammatical Categories*, pp. 166–9, the ideas of the grammar were 'perhaps' more often received in England from the 1668 *Essay* of Wilkins.

¹⁶⁷ RN, *The Muscill Grammarian* 1728, pp. 151–2.

¹⁶⁸ *Ibid.*, p. 169: 'Musick and oratory agree strangely in principles.'

¹⁶⁹ *Ibid.*, p. 174.

correct but also consistent with humanity's thinking and acting,¹⁷⁰ although musical decorum requires the avoidance of 'affectation and extreams'.¹⁷¹ Note, however, that musical invention also concerns the structure of certain forms of thought as shaped and expressed in a variety of musical forms 'which occasion may call for'. Hence, as in 'Of Etymology', so here too North anticipates the post-1740 developments, when a correlation was increasingly made between thought and style.¹⁷²

The third branch of learning is represented by North's 'inquiry after good musick', which comes 'from one by nature [*physis*] as well as art compleatly made [*nomos*], who is arrived at a pitch to throw away the lumber of his rules and examples, and act upon the strength of his judgment, and knowledge of the subject matter itself, as if it had bin bred and born in him ab origine'.¹⁷³ For good music is 'advanced' not 'by accident, but with design',¹⁷⁴ the musical reasoning that manifests itself in what North calls 'musicall ayre' and what we now call 'tonality'. For ayre is the animating force that gives 'life' to a piece of music and makes it 'significant'.¹⁷⁵ Hence, it is 'like witt in language',¹⁷⁶ and also like the equitable spirit in law. Nevertheless, as he reminds his reader, 'all pre-eminent vertues, and good quallitys are obnoxious to corruption or abuse'.¹⁷⁷

The second part of 'The Musicall Grammarian' has the title 'Memoires of Musick'; and here North extends his argument from living usages—individual as well as social—to past usages so as to

¹⁷⁰ Ibid., p. 176.

¹⁷¹ Ibid., p. 147.

¹⁷² For the post-1740 linguistic developments, see Cohen, *Sensible Words*, pp. 78–136.

¹⁷³ RN, *The Musicall Grammarian*, pp. 195–6.

¹⁷⁴ Ibid., p. 176.

¹⁷⁵ Ibid., p. 168 *et passim*; for music without 'ayre'—'contingent' music, which is 'a sort of nonsense', see also p. 153.

¹⁷⁶ Ibid., p. 196.

¹⁷⁷ Ibid., p. 201.

bring the latter into the musical tradition. In the 'Advertisement' to this part, he explains that in order to complete the debt he owes to the 'transcendent subject' of music, he searched into its 'genealogie', whose source is among the clouds ('*cajus caput inter nubila*'). Like his pre-history of the common law, North's 'genealogie' is not 'a full history' of music, for he aims merely 'to collect and modifye some historico-criticall scrapps', so as to be eased of 'an incumbrance that as a dett lyes heavy upon my conscience',¹⁷⁸ although experience had taught him that in matters of antiquity

...there are two extrems: 1. a totall neglect, and 2. perpetuall guessing; between which proper evidences are the temper[,] that is[,] if there be any [evidences], to make the best of them, if none[,] to desist.... [And] if the result of what follows shall appear fond, erroneous or frivolous, in a pure essay, it may be excused, the rather becaus neither religion, the state or good manners are like to be hurt by it.¹⁷⁹

As previously pointed out, these 'historico-criticall scrapps' constitute the first known naturalistic explanation of music's 'originall'.¹⁸⁰ For not only present practice but also past usage begins with 'the use of voices, and language among men', 'especially considering how usefull singing was in the pastoritall life, the primitive race of men ledd'.¹⁸¹ North, however, does not dwell on a state of nature, for his main concern is to develop music's 'genealogie' in four stages: (1) antiquity; (2) 'Gothic' times—from

¹⁷⁸ Ibid., p. 220.

¹⁷⁹ Ibid., p. 221.

¹⁸⁰ See *supra* Introduction. Before RN, music was treated as a gift from God or as an invention of such mythical figures as the blacksmith, Tubalcain, and the fire god and inventor of metallurgy, Vulcan. For Pythagoras as the human representative of Vulcan and, hence, as another supposed inventor of music, see Kassler, *Inner Music*, p. 124.

¹⁸¹ RN, *The Muscicall Grammarian* 1728, pp. 223–4, where he also points out that 'any one having a clear, and good voice, tho purely naturall, must be a prime musitian; and per[ha]ps Tuball Cain (or Vulcane) might be such a one, and merit the fame they have had for it'.

the fall of the Roman empire to the twelfth century; (3) the twelfth century to the Reformation; and (4) the Reformation to c.1727. As in his pre-history of the common law, here too the ‘Gothic’ stage laid the groundwork for modern usages that date from the twelfth century—in music, ‘the epocha of ‘all our modern harmony’.¹⁸² And as in law, here too the four stages are not static, because the tradition of music flows

...uniformly in the same channell without other restraint then the nature of things, and the common sence of humane kind requires. And thus thro divers modes of operation, according to the various fancys and fashions of different times and nations, (but all founded upon the same principles) it is come downe to us, who have our turnes in prescribing disciplinary formes as others have had. And as others before us, so wee claim our performances to be the best.¹⁸³

Music, then, like other human endeavours, is ‘subject to continuall change,¹⁸⁴ the motor of which is human abuse (‘corruption’) in the form of bad habits—errors of conduct—in both the teaching and practice of music.¹⁸⁵ To remedy these, North advises teachers and practitioners to proceed on a rational basis, as exemplified in ‘The Muscally Grammarian’ itself. And he also clarifies what he means in the ‘Advertisement’ to the first part, where he states that his title is not grammar but grammarian, because

...from the former [i.e., grammar] is expected a ssume of rules sufficient to instruct an art, but the other [i.e., grammarian] is of a superior order, pretending to reason upon those rules, and

¹⁸² Ibid., pp. 246–7.

¹⁸³ Ibid., p. 248. Cf. *infra* RN, ‘Of Etymology’, f. 48: ‘It is the happyness of every age to thinck their speech more refined then formerly’. Cf. also RN, *Of Building*, p. 122, regarding the time when ‘wee surrender all our living concernes, to succeeding ages, who are to censure us, as wee our ancestors’.

¹⁸⁴ RN, *The Muscally Grammarian* 1728, p. 229.

¹⁸⁵ Corruptions in teaching include rote learning, whereas those in practice include failures in decorum and in innovation; see also Kassler in *ibid.*, pp. 34–5.

to shew the principles of them derived upon nature and the positive truth of things. *This is like etimology to language, or as natural reason and history* [i.e., historical experience] *to humane laws*, and if any rules happen to result, they are such as flow, not from comon practise [i.e., usage] or authority [i.e., fashion], but as the very consequences of fact.¹⁸⁶

If the term ‘fact’ means a datum of human experience, then ‘Of Etimology’ and ‘The Muscally Grammarian’ provide insight into North’s conception of the relation between nature represented as ‘humanity’ (the abstract term) and convention represented as a literary, legal or musical form. For in both texts North holds that conventions are constructively devised for, and adapted to changing circumstances and conditions of humanity. They have significance only as they reflect and express the various elements of human thought and experience to which the conventions have been assigned. And when the conventions cease to reflect and express those elements of humanity, they lose their meaning, grow obsolete and die. For North, therefore, culture is shaped by such norm-governed practices as language, law and music.

¹⁸⁶ RN, *The Muscally Grammarian* 1728, p. 88 (italics mine).

SUMMARY AND CONCLUSION

In the foregoing study I have endeavoured to outline the main principles of North's practical philosophy by extracting from a wide range of his writings what is consistent in his pattern of thought. In 'reading' his texts I have not entered as a literal interpreter, for example, by explicating the grammatical meaning of his words. Rather, my interpretation has been liberal, because I sought to discover the 'rational' meaning—the spirit, not the letter—of his texts, or at least the ones that provide my sample. From the evidence adduced, it is clear that North's conception of law is different from that of the classical and modern natural lawyers. And the same is true of his conception of morality. For both kinds of natural lawyers assimilated virtue to obedience; and even though their morality was meant to serve the common good, in practice it was a matter of compliance with external rules or laws and not a direct pursuit of the good.¹

By contrast, North's morality of self-governance is a direct pursuit of the good not only for himself but also for others.² Although achieving the common good requires upholding law and order for the conduct of people and government, law still has to embody principles of fairness not only between person and person but also in its public administration.³ It is not surprising, therefore, that in one of his essays North distributes the whole of morality into moderation ('temperance'), fairness ('justice') and conduct

¹ See Schneewind, *The Invention of Autonomy*, especially pp. 20 and 289.

² This statement should not be understood in a teleological sense, i.e., as consequentialist or proto-utilitarian. According to Schneewind, *The Invention of Autonomy*, pp. 101, 116, 160, 200, 205, 209, 249, John Smith, Henry More and especially Richard Cumberland were the main representatives of this kind of morality.

³ See Wierzbicka, *English*, p. 160, regarding 'fairness' as 'a unique conceptual invention of modern English'.

(‘behaviour’).⁴ Moderation and fairness are human qualities, whereas conduct is a sign of the absence or presence of such qualities. And since morality is in the will,⁵ North defines virtue as a ‘will or *chois* determined to good’.⁶ His ethics, therefore, is virtue-centred, a kind of ethics that was unfashionable during his lifetime.⁷ Indeed, both classical and modern natural lawyers rejected the notion that human qualities like moderation or fairness had anything to do with an agent’s motives or moral insight, since for them, virtue was simply a habit of following rules with respect to oneself and others.⁸

According to J. B. Schneewind, who has been my principal guide in these matters, the main competitor of natural-law morality was perfectionism, a morality that reduces the virtues to one virtue—that of increasing perfection. But like the natural lawyers, perfectionists, too, advocated a morality of obedience,⁹ not a morality of self-governance. And the same is true for the innate perfectionism of René Descartes, even though his ‘definition of virtue as resolute constancy of will puts self-governance squarely at the center of his ethics’.¹⁰ This definition, coupled with the provisional morality (*‘une morale par provision’*) in Descartes’s

⁴ See f. 132v in RN, ‘Breeding’ (UK:Lbl) Add MS 32523: ff. 132–141v (early period). Note that the modern natural lawyers tended to reduce the whole of value (i.e., the good) to social ethics, a tendency that was realised by Pufendorf. As a result, according to Friedrich, *The Philosophy of Law*, p. 114, there was ‘a dangerous confusion of valuational and existential considerations’—i.e., a confusion between the ‘ought’ and the ‘is’—because ‘it becomes possible to identify law with the actual conduct of men in society’.

⁵ See Chapter 2 sect. 2.2.

⁶ See f. 122v in RN, ‘Pride’ (UK:Lbl) Add MS 32523: ff. 122–131v (early period?).

⁷ See Schneewind, *The Invention of Autonomy*, pp. 286–9, who points out that during the period in question, the ‘commonest position ... was that virtue is secondary to laws or rules’.

⁸ Schneewind, *The Invention of Autonomy*, pp. 20, 77, 288–9.

⁹ Schneewind, *The Invention of Autonomy*, p. 289.

¹⁰ Schneewind, *The Invention of Autonomy*, p. 189.

Discours de la méthode (1636),¹¹ may account in part for the admiration of that philosopher which North expresses in a number of his writings, although, as he himself states, he is no Cartesian.¹² But neither is he a perfectionist, for he has a thoroughly realistic attitude about his own, as well as humanity's common failings. Hence, his advice is: 'Lett us make the best of what wee have, push at the head, imploy our time and industry in vertuous exercises, and arts; if we get not perfection, [nevertheless] we shall be very well pleased and, never repent'.¹³

Moralities of obedience may be described as dogmatic, because the validity of their rules is independent of, and *prior to* experience. In the case of the classical natural lawyers, the appeal was to a metaphysics;¹⁴ and it is this appeal that North critically, though covertly, counters in his 'second thoughts' concerning suicide. In the case of the modern natural lawyers, the appeal was to 'the natural',¹⁵ that is, to an empirically discoverable set of universal principles that provide the propositions from which moral axioms are derived.¹⁶ For North, however, morality is neither independent of, nor prior to experience; rather, it grows with experience, because morality—or

¹¹ For Descartes's provisional morality, see Schneewind, *The Invention of Autonomy*, p. 186.

¹² See f. 221v in RN, 'Authoritys' (UK:Lbl) Add MS 32546: ff. 207–230v (early period): 'I am not a Cartesian in the sense of the academicks so as blindly to idolize him, but am glad as they are (but with more civility) to use him.'

¹³ RN, *Notes of Me*, p. 153.

¹⁴ For Descartes, the appeal was to both a metaphysics and an epistemology; see Schneewind, *The Invention of Autonomy*, p. 191 n.35.

¹⁵ See Hobbes, e.g., *Leviathan*, p. 228, for an appeal to 'the known naturall Inclinations of Mankind'; Pufendorf, *De officio hominis et civis*, pp. 3, 17, for an appeal to God-given faculties, as well as to human 'nature and disposition'; and Locke, *An Essay*, pp. 563–4, for an appeal to a universal, God-given human nature.

¹⁶ Note that the argumentative function of an empirical concept of human nature is to set the limits of the prescription of moral axioms, defined as 'natural' rights that are (supposedly) fixed and universal, as well as discoverable by logic and reason. The abstract naturalism of the modern natural lawyers thus differs from RN's naturalism *supra* Chapter 2 sect 2.1.

better, a morality—is the subjective condition of an individual as he or she responds to experience, a response that flows from conscious intention, the fruit of deliberation leading to choice among available options. In short, this kind of morality requires individual agents to evaluate the options by reasoning out for themselves what they ought to do.

As indicated previously, North's standard of evaluation is probabilistic reasoning. Hence, it is neither the classical natural lawyers' reasoning on a cosmic scale to support the *a priori* propositions which the moral theologian presents, nor the modern natural lawyers' reasoning from legal rules validated *a priori* so as to support the policies of the sovereign power. For in North's pattern of thought, reason serves two functions. On the one hand, it is an instrument used in decision-making; on the other hand, it is a critic that assists in evaluating decisions, because *in probabilistic reasoning, moral opinions are always hypothetical and subject to revision*. And this may be one explanation, perhaps even the principal one, for North's ongoing practice of self-monitoring in order to interpret himself to himself.

Although it seems that Montaigne's method of ethics provided the principal model for North's practice, there also could have been other models. For example, Montaigne had advised keeping a journal;¹⁷ and during the first part of the seventeenth century, some Englishmen seem to have followed that advice.¹⁸ Among these was North's grandfather Dudley, who had been 'steeping my self ... in the study of *Mountains Essays*, which are full of Scepticism'.¹⁹ And as a consequence of his reading, he discharged his troubled thoughts between 15 and 20 March 1637 in a manner 'hasty, disastrous,

¹⁷ But he did not call it a 'life-journal' (RN's phrase). See Montaigne, 'Of a Defect in our Policies', *The Essayes*, pp. 102–3. For RN's advice, see *supra* Chapter 2 sect. 2.2.

¹⁸ E.g., in the 1640s Henry Slingsby recorded that 'I follow'd y^e advise of Michael de Montaigne to sett down in this Book such accidents as befall me ... wthout observing any time, method, or order in my wrighting, or rather scribbling'; see Parsons (ed.), *The Diary*, pp. 54–5.

¹⁹ North, *A Forest promiscuous*, p. 148.

cloudy, tumultuous, incorrect, incomposed, precipitate, over-subject to repetitions, for want of looking back and re-examination in the course'. But once his thoughts were recorded, he could subject their '*particular, and humane frailty, blindness, presumption, unquietness, and vanity*' to an inquisition.²⁰

From comments in 'Of Etimology' regarding the ambiguity of meaning in words, we also know that North had read the Port Royal logic.²¹ But that work also included a rudimentary inquiry into a method for probable knowledge, because one of its aims was to discover a standard according to which an agent ought to proceed in drawing conclusions about the data of experience, thereby avoiding errors that result from hasty inference, from pre-conceived opinion or from prejudice of custom. For though agents rely upon experience alone in judging, yet from reflecting on the successes and failures of their judgments, they can learn 'to regulate and correct mistaken judgments' by carefully proportioning their assent 'according to the evidence'.²²

Yet another model could have been the method of ethics practised by North's brother Francis. For by nature that brother was inclined to passion and 'upon any offence to inflame'. And although in general his 'strength of reason and rectitude of will' gave him 'such mastery over his temper', he was assisted in this mastery by two 'arts':

- ...1. that when he fell under any deliberation of great concerne to him, and the point was nice, and stood almost in equilibrio, he took his pen and wrote downe the reasons either way, as they fell in his mind[,] in any words, or manner of expression; and had that paper for the most part lying in his way, which gave him frequent opportunity to weigh the cogencys of them.
2. when he observed himself in his mind unsteddy, or

²⁰ Ibid., pp. 115–73, p. 115.

²¹ See *supra* Chapter 3. sect. 3.2 and *infra* RN, 'Of Etimology', f. 24v.

²² Hendel in Arnauld, *The Art of Thinking*, pp. xxi–xxii; see also Dickoff in *ibid.*, p. xlv. Note, however, that Arnauld, *ibid.*, pp. 271–5, 277–9, was highly critical of Montaigne. And the reason, according to Nadler, *Arnauld*, p. 28, was that Arnauld considered scepticism as 'the primary threat to true religion'.

disturbed, he set down the truths that ought to confirme him; and so upon occasion, of divers emergencys of his life; and these he 'tituled, speculums, which frequently admonisht him of some growing fondnesses, for when he perceived the rising of them, he took up his speculum, which soon reduced them.²³

Although both 'arts' served as a method of self-monitoring, they clearly had different purposes. For the second 'art', which results in a 'speculum', was intended to reflect what Roger North calls the 'inner-man, his excellencies and imperfections', somewhat like mirrors reflect the outer-man, whereas the first 'art' seems to have been a method for weighing matters under deliberation and, hence, similar to the purpose of his own tests for evaluating experience.

As previously indicated, North also allows that a morality may be guided by a set of maxims made or maintained by an agent and that individual agents may also govern themselves according to known legal rules. But if ignored, legal rules may be enforced upon an agent by courts maintained or authorised by the state. For law is 'a catholicon' or universal remedy that 'fitts all distempers'²⁴, that is to say, it pursues an average while still upholding morality. Nevertheless, there is no *necessary* connection between the law and a morality, because each has a 'life' of its own.²⁵ And the same is true of religion, which is another universal remedy 'adapted to the infirmitys of men' as 'a supplement to imperfect human nature' and imposed 'to no other end, but that men might live beneficially to themselves and others'. Hence, 'if mankind were not inclined to the

²³ RN, *Life/FN*, pp. 222–3, who also includes examples of FN's 'speculums', *ibid.*, pp. 223–6.

²⁴ See ff. 8–8v in RN, 'A letter in answer to an inquiry touching an act of paines and penaltys, mentioned in the printed votes ... [*sic*] Jan. 1689' (UK:Lbl) Add MS 32524: ff. 1–12v.

²⁵ For a glimpse of what RN's morality and jurisprudence might look like in a modern guise suited to a pluralistic society, see Derrett, *Morality and Law*. Unfortunately, this book came to my notice too late to take account of the author's insights.

contrary, there were no need of religion, at least such as we know, for the end of it were accomplish't'.²⁶

The implication is that if people could learn *how to live* so as to promote individual, as well as reciprocal good, human conventions like law and religion would be unnecessary. But there is the further implication that people are recalcitrant learners. Perhaps for this reason, North's sceptical, anti-dogmatical philosophy counsels that in practical life we should follow the appearances (the presentations of perception and thought); satisfy our hereditary tendencies as long as they preserve health; adhere to law and tradition; and seek after truth even if we can attain only probable, not certain knowledge.²⁷ Is not this a moderate kind of scepticism?

But if scepticism is described in more extreme terms as the belief that no person's judgment can claim to be valid,²⁸ then on the basis of such description one might ask, can a sceptic actually live his scepticism? To this question, Montaigne had an answer, when he pointed out that a sceptic is not 'a stone or a blocke', that is to say, a stereotype created by dogmatists. Rather, a sceptic is 'a living, discoursing, and reasoning man',

...enjoying all pleasures and naturall commodities, busying himselfe with, and using all his corporall and spirituall parts in rule and right. ... [Even though] he finde not this proper and singular marke of judging in himselfe, and that he perceive he

²⁶ See f. 124 in RN, 'Religion 1.' (UK:Lbl) Add MS 32549: ff. 124–125v (early period).

²⁷ RN, therefore, differs from the author of the Port Royal logic, who made a qualitative distinction between knowledge that is certain and that which is merely probable and inferior in status to the former; see Hendel in Arnould, *The Art of Thinking*, p. xxi. According to Ferreira, *Scepticism and Reasonable Doubt*, pp. 36–40, Locke, too, made an 'absolute dichotomy' between the two kinds of knowledge, so that his anti-scepticism was not in a direct line of the earlier tradition of 'constructive scepticism'—the moderate form of anti-scepticism of Wilkins and others.

²⁸ See, e.g., Tiles and Tiles, *An Introduction to Historical Epistemology*, p. 48.

should not engage his consent, seeing some falsehood may be like unto this truth; [yet] hee ceaseth not to conduct the offices of his life fully and commodiously.²⁹

This description fits North well, for even after he retired from public life and removed from London to the country, he continued to fulfil his duties ‘fully and commodiously’, perhaps guided by the thought that learning how to live, like all learning, requires ongoing practice, as well as a comparative understanding of the practice of others. Indeed, his curiosity about such practices is manifest in many of his writings. For example, in a number of essays he reports on practices used in estate management—accountancy, building, improvement of land. In his life-writings he describes his subjects’ customary mode of conduct or behaviour—the manners or mores in which each person comports him- or herself for better or worse. In his writings on music, he recounts some of the established practices or modes of procedure followed by organ makers, composers, performers, music teachers and others. And in *Notes of Me* he details the practices involved in generating his second, habitual nature—the moral character that he hoped to attain and, perhaps, did attain.

What, then, can be said about his second nature? To answer this question is beyond the scope of this study, for it would require a full-length biography. Nevertheless, by way of a conclusion, I should like to indicate how the question might be answered with reference to the epithet ‘Person of Honour’,³⁰ although, as will become apparent, this is not to suggest a replacement of one stereotype (the Whig stereotype) with another. To begin with, recall North’s brief allusion to a medieval (‘gothic’) custom called ‘honour’ and to Quixote who was ‘styled’ of honour.³¹ In that allusion North is self-consciously

²⁹ Montaigne, ‘An Apologie of Raymond Sebond’, *The Essayes*, p. 256.

³⁰ This epithet was commonly used in writings published anonymously, and RN himself had recourse to it; see *infra* Appendix B: [NORTH (tr.)] 1701, [NORTH] 1713 and [NORTH] 1714.

³¹ See *supra* Chapter 1 sect. 1.4. Note that Bernard Mandeville described Quixote as the last person of ancient honour on record, because (as he goes on to explain) persons of modern honour set a new standard (self-interest); see Mandeville, *The*

ironic, because he himself was so styled, that is to say, he had the title 'honourable', a title that is given to sons of peers below the rank of marquis. But numerous remarks in his writings suggest that he also regarded the title as an index of his character.

For example, when commenting on the important period in his professional life—the period from 1682 to 1685—he writes that 'long conversation [with his brother Francis], and the judgment cultivated by it', armed him 'against the time of tryall which is no[w] upon me, and enables me to defie the world, and all its temptations, and to hold my honour and fidelity, as well as constant and reall judgment and principle, unshaken, as I hope I shall doe till the last moment of breath'.³² In this passage a connection is made between an honour or public title (the social dimension) and fidelity (the moral dimension),³³ not unlike the connection made by Cicero, whose term 'honourable'—*honestas*—described a good man, a man who is honourable intrinsically and so would be honoured and trusted by other good men.³⁴

In its moral dimension, then, a person of honour might be described as one who has a fine sense of, and strict allegiance to what is due or right—right that ought to be done and that is predicable only on the issues of volition and intention in the activities or deeds of an individual. North himself provides such a description in a letter of legal advice regarding the abjuration oaths, where he states that when 'truely considered', the 'sort of obligation' called honour is 'a clear principle of doing what is right and fitt to be done' and not doing what has grown out of 'custome, comon opinion, and the ineluctable prejudice of education'.

Fable of the Bees, vol. 1, p. 199. For Mandeville's morality as a human invention, see Schneewind, *The Invention of Autonomy*, pp. 311, 323–9, *et passim*.

³² RN, *Notes of Me*, p. 96; see also RN, *Examen*, p. 336, for the sentiment that private persons are 'obliged to common Trust and Honesty'.

³³ *fidelity*: (OED 2a, obs., of persons) honesty, truthfulness, trustworthiness, veracity.

³⁴ See the translator's note in Cicero, *On Duties*, p. xliv.

As when a person generously bredd, is by his equall reproach[ed] to his face as a lyar and son of a whore, he thincks he is bound to seek his reparation by a challenge, wherein he will kill the adversary if he can, and to compass it, exposeth his owne life upon equall termes. And the world generally expects it, and unless he doth it he is infamous. And where the adversary falls, tho it be murder in law, the hand is not blamed, upon such an occasion, but in common conversation, rather applauded.³⁵

In this passage North describes a custom of fighting that was called honour by Quixote.³⁶ But this custom, as North elsewhere writes, is false honour, because true honour is governed by the maxim, ‘do nothing unjust’, because honour consists ‘wholly in doing what is truly just and good, and nothing otherwise’.³⁷ Indeed, true honour ‘will be found the greatest ingredient in a happy life and posterity’, so that it is not ‘such a chimera as the loose world makes it’.³⁸

Because North sometimes uses masks drawn from his experience in the common law, other dimensions of a person of honour might be drawn from common-law criteria for witnesses and jurors.³⁹ In the case of witnesses, criteria for determining their credibility were based chiefly on evaluations of moral character, in particular whether a person was deemed honourable (of good reputation) and honest (sincere), whereas in the case of jurors, criteria for determining their selection were based on a medieval formula, *liber et legalis homo*—a free and legal man, for only one who was so accounted could be sworn.⁴⁰ However, because of legal

³⁵ See ff. 32–32v in RN, ‘A perswasion touching the oaths, 30 Ap. 1696. In a letter’ (UK:Lbl) Add MS 32524: ff. 29v–43.

³⁶ See *supra* Chapter 1 sect.1.4.

³⁷ RN, *A Discourse of Fish and Fish-ponds*; see Appendix B: [NORTH] 1713 (re-issue 1714, p. 57).

³⁸ RN to William, 6th lord North, 16 March 1696, ‘Letters’, pp. 232–5, p. 235.

³⁹ For these criteria, see Shapiro, *A Culture of Fact*, pp. 8–33.

⁴⁰ This formula dates from the treatise, commonly referred to as ‘Glanvill’, that states the law (writs) and custom of England in the reign of Henry II; see Hall (tr.), *The Treatise ... called Glanvill*, pp. 22, 150, 157, 159, 161–3, 165–9. By the time

and other transformations that occurred during North's lifetime, this formula requires some comment.

Of the two terms in the formula, the first term described a man who was privileged, that is to say, entitled or licensed to make lawful marriage, to own and alienate property and to make contracts.⁴¹ For alienations and contracts, the exercise of free will was essential, so that the term 'free man' had a double meaning. But, as Charles Wilson pointed out, during the second half of the seventeenth century, the rapid rise of the 'free' elements in society forced a change in the meaning of the term from the medieval 'privilege held by grant or prescription by which men enjoy some benefit beyond the ordinary subject' to the modern 'power to do as one thought fit unless restrained by law'.⁴²

As for the second part of the formula, 'legal man', this term described a man who had full legal rights, being neither outlawed, excommunicated, nor in any way disqualified from appearing in courts of law. But here, too, another meaning was emerging, according to which a 'legal man' was also a reasonable man, for as James Franklin has argued, because certain medieval distinctions regarding grades of presumptions and degrees of proof were 'ill adapted to explanation to juries', eventually 'all probabilistic concepts in English law were reduced to one word, *reasonable*'; and 'any question on the evidential relation between facts became expressible in terms of what the reasonable man would think'.⁴³

of Coke, the first word in the formula seems to have become *probi*—morally upright, honest, honourable; see Coke, *Selected Writings*, p. 1022; see also Hale, *The History of the Common Law*, pp. 99, 161 (on jury trials), where at the latter page he lists the qualification of jurors, the first of which is: 'They are to be *Probi & legales Homines*.'

⁴¹ See Coke, *Selected Writings*, pp. 812, 851.

⁴² Wilson, *England's Apprenticeship 1603–1763*, pp. xi, 9. See also Hobbes, *Dialogue*, p. 73: 'Law obligeth me to do, or forbear the doing of something; and therefore it lies upon me an Obligation; but my Right is a Liberty left me by the Law to do any thing which the Law forbids me not, and to leave undone any thing which the Law commands me not.'

⁴³ Franklin, *The Science of Conjecture*, pp. 62–3. For aspects of this change, see Shapiro, *Probability and Certainty*, pp. 174–9.

According to Anna Wierzbicka, the common-law concept of ‘a reasonable man’ is not aristocratic but democratic and pragmatic. For such a man is neither an intellectual nor a theoretician; ‘and yet he is seen as someone whose judgment can be trusted’. Hence, the ‘reason’ attributed to ‘a reasonable man’ is not abstract reason, the reason associated with systematic thinking and sustained logical reasoning. Rather it is akin to common sense. For although

...the concept of ‘a reasonable man’ is a vital legal concept, it is not a purely technical one. If ordinary people like jurors could not understand this concept (via ordinary language), it could not play the role in law that it does. It is a concept that is expected, *inter alia*, to guide communication between the legal profession and ordinary people. To make sense to ‘ordinary people’, the phrase *a reasonable man* (as it is used in law) must be intelligible to ‘an ordinary man’.⁴⁴

Since both witnesses and jurors were deemed to be ‘perceptually competent’ and since ‘there was no suggestion that either “sense” or memory, key elements in matters of fact, were less acute or accurate in those of lower status’,⁴⁵ the formula *liber et legalis homo* seems to embody the common-law concept of a person who is honourable, honest and reasonable—that is to say, of good repute because naturally at one with family, friends and neighbours; free of moral corruption because innocent of crime and wrong-doing;⁴⁶ and capable of determining matters of fact by means of forethought and careful deliberation.⁴⁷

⁴⁴ Wierzbicka, *English*, pp. 103–40, p. 107.

⁴⁵ Shapiro, *A Culture of Fact*, p. 26.

⁴⁶ RN, *Life/FN*, p. 10, states that he values himself ‘upon nothing but an untainted sincerity’, i.e., honesty that is uncorrupted. According to Selden, *Table Talk*, p. 88, ‘moral Honesty’ is ‘my Duty towards God, and my duty towards Man’, a definition similar to that of RN *supra* Chapter 2 sect. 2.4.

⁴⁷ Although women could not serve on juries, RN does not restrict reasonableness to men; see, e.g., ff. 69–69v in RN, ‘Of the generall conduct of weomen’ (UK:Lbl) Add MS 32526: ff. 68v–74 (early period?), where he states that although women in general have less bodily strength than men, such difference in strength does not affect ‘the rationall faculty’, for ‘that may be as strong and perfect as in men’.

Notably absent in this common-law conception is any hint of a radical corruption of human nature,⁴⁸ such, for example, as is found in the maxim, *homo homini lupus*—man is a wolf to other men⁴⁹—or in the Christian story of the fall of man from an original state of perfection—the doctrine of original sin by which Christian theology has traditionally sought to explain how sin originated and why it is universal.⁵⁰ Although North acknowledges that human failings are common and universal, he denies that people are naturally depraved.⁵¹ Hence, he is no Augustinian pessimist, for as he writes in the *Examen*, ‘I dare say that, however open Differences make a Noise, there is in the World, bad as it is, more Justice among Men, upon Account of the common Obligation of Equity and Conscience, than from all the Process of Law and the Coercion of the Magistrate all the World over’.⁵²

On this rather optimistic note, then, I conclude Part I of this study.

⁴⁸ Hobbes, *Leviathan*, used the premise that people are naturally depraved as a postulate in a logical game; hence, he may not have believed it. But the premise is clearly stated in Pufendorf, *De officio hominis et civis*, p. 24, 125; and, according to John and Jean Yolton in Locke, *Some Thoughts*, pp. 23–4, there is evidence that Locke held it as well.

⁴⁹ See *infra* RN, ‘Of Etimology’, f. 59, who uses the version of Erasmus, although the maxim itself dates from antiquity.

⁵⁰ RN’s father DN (2) pondered on this doctrine which, to him, seemed ‘so opposite to the way of Justice declared in Scripture’, especially ‘the notion of a pure spiritual substance, to become impure by being united with a material body’. But he resolved the problem by recourse to an ‘Hypothesis’, that the ‘immortal Soul’ is placed in command over ‘the sensitive part of man’. See North, *Light in the Way to Paradise*, pp. 121–8.

⁵¹ See RN, ‘Of Etimology’, ff.57v–58, for his refutation of Hobbes’s premise that people are naturally depraved.

⁵² RN, *Examen*, p. 336.



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PART II

An Edition of Roger North's 'Of Etimology'
(c.1706–c.1715)

King. 8. Decr. 1718.

Dearest Niece.

I had of yours of 6th Inst, and as to
Matter of China, I believe it had bin better
not to have moved it, and if it be returned
to its place, without his knowing of it, I think
it will be best, for it is a thing so apt to run
upon all tongues in Report, of conveying things
out of his hand without his knowledge &c. Besides the
harm it will be of offence to you, & altogether
may be Inconvenience amount to more than of
things are worth. . .

As to the Recognition I shall doe No act to of Justice
of the Condition on so it was returned John, that is
performance of it fathers will, and if they make Joynture
and Settlement, they must be all subject to the Condition
if so they have Notes. I was sent too, for a list of
writings, we sent, and among the rest a Most
gaze I have to secure Colewicks account. I presume
Mr. Burgh will see that list.

I know nothing to advise but that you Conquer
yourself in point of Complaisance to your Sister when
you have one, she may be a good friend, and should
have no offence given her, nor advantage to the
Tobacco power, that &c. hardly will not see in one day.

Handwriting of Roger North
in a letter to his niece, Ann Foley, dated 3 December 1718 (A:Nk)

Figure 5

INTRODUCTION TO THE EDITION

PRELIMINARY REMARKS

In the foregoing study attention has been drawn to North's practice of testing his thoughts in writing so as to evaluate his responses to experience. This practice included a re-examination of what he had learned as a student at Cambridge when reading some of the works of Descartes, an experience that seems to have been transformative. For the mechanical philosophy of Descartes gave intellectual substance to North's 'entertainments' in applied mathematics; and as a consequence, he began to read the works of other mechanical philosophers, including Hobbes. Although in an early piece of writing North describes Hobbes as heterodox,¹ and although he sometimes is critical of that philosopher, he is a fair critic, not a dogmatic one. For example, he describes Hobbes as 'without competition the best English translator';² he takes pleasure in some of Hobbes's witticisms about human nature;³ and he develops some of Hobbes's insights into the physical nature of sound.⁴

In addition, an outline North made for 'the contemplation of animal life in general' (*anima*)⁵ provides evidence that he planned to record his responses to the experience of reading Hobbes on that subject. For his 'contemplation' was to begin with 'the great mystery of sense', as well as 'the knowledge of memory, judgment, sleep,

¹ RN, *Cursory Notes of Musicke*, p. 151.

² See *infra* RN, 'Of Etimology', f. 34v.

³ E.g., Hobbes's identification of a pleasure that 'happeneth only to men of skill in music', which is the 'rejoicing of their own skill'; see Kassler, *The Beginnings of the Modern Philosophy of Music*, p. 15; see also RN, *Notes of Me*, p. 147, and RN, *The Muscicall Grammarian 1728*, p. 167.

⁴ See Kassler, *The Beginnings of the Modern Philosophy of Music*; and Kassler, 'Roger North'.

⁵ See f. 3 in RN, Untitled (UK:Lbl) Add MS 32546: ff. 1–18v (pre-early period?).

dreams and witt'.⁶ And though North admitted that the 'passions are a subject too dilated for me to undertake throlly', nevertheless, he would not omit 'some considerations I have about some of them[,] especially fear, and the greatest of all[,] fear of death, which corrupts humane nature, and is the caus of many evils, and immoralitys'.⁷ He would also assay 'progeny' and education in regard to virtue and honour,⁸ as well as 'policy devine and humane, religion, and government'. And in 'matters that relate to men assembled, or together[,] the grand consideration is the use of speech, which I shall enlarg upon, even historically, wherein I expect as in several other heads of this devision to thinck my self more impertinent then in the rest'.

Perhaps, North's familiar essay, 'Of Etimology', with its stress on literary and legal language as a social enterprise, represents the promised 'consideration' of language usage, 'even historically'. But the essay is important in its own right for its defence of scholarship ('learning') and for its evidence of North's historical jurisprudence. Although neither a finished piece of writing nor an example of North's best writing, the essay provides evidence of his own stylistic norms, as well as some of his writing practices and techniques—for example, his use of the technique of improvisation, which he combines here with the style of entering notes or memoranda in a commonplace-book. As previously indicated and as will be discussed more fully below, the integrity of the copy text is problematic. In its present state, however, 'Of Etimology' has thirteen sections (see Figure 5, where editorial additions are in square brackets).

⁶ For these topics, see Hobbes, *Leviathan*, Part I; see also RN, 'Some essays, concerning the manner of our sence, or perception of things' (UK:Lbl) Add MS 32526: ff. 8v–34 (mostly early period).

⁷ For Hobbes, fear of death is one of the two mainsprings of human action, the other being desire for power, whereas for RN, fear of death explains the 'timorous complaints about health, which most indulg'; see RN, *Notes of Me*, pp. 204–6, 210.

⁸ For Hobbes's conception of virtue as a habit of obedience to rules, see *supra* Summary and Conclusion; for his conception of honour as a consequence of the desire for power, see Hobbes, *Leviathan*, pp. 150–60.

[*Common etymology, ff. 1–49v*]

- | | |
|--|---------------------|
| 1. Of the word, its interpretation and extension | [unedited ff. 1–4v] |
| 2. Justification of the common etymology | [ff. 5–11] |
| 3. Etymology, as other criticall studys, are very usefull in the world | [ff. 12–21v] |
| 4. Of language, and its inc[idents] | [ff. 22–29v] |
| 5. The capacity of language, and the power of translating | [ff. 30–35v] |
| 6. Of termes of art, style and idioms | [ff. 36–40] |
| 7. Some examples of vaine tampering with languages | [ff. 40v–49v] |

[*Extended etymology, ff. 50–111v*]

- | | |
|---|------------------------|
| 8. Notes relating to the origination of government, laws, and their peculiar language | [ff. 50–67] |
| 9. The frailetys of soveraigne powers | [unedited ff. 67v–77v] |
| 10. The difference and comparison of governments | [unedited ff. 78–83v] |
| [11.] Concerning laws | [ff. 84–88v] |
| [12.] Laws are historical | [ff. 89–96v] |
| [13.] Originals of common law | [ff. 97–111v] |

*Section heads in
British Library Additional Manuscript 32530: ff. 1–111v*
Figure 6

In editing the copy text I have omitted sections 1, 9 and 10 for reasons given below in a description of the manuscript's physical features. It also is to be noted that two manuscript volumes in the British Library have the same running title as the copy text. To avoid confusion, therefore, I reserve the title 'Of Etimology' for the copy text and refer to other portions of the two manuscript volumes by their sigla, (UK:Lbl) Add MSS 32529 and 32530, using this convention also in footnotes to the edited text. Because some portions in 32529 have either a close or a near relation to 'Of Etimology', I have provided a brief description of that manuscript in Appendix A.

DESCRIPTION OF THE MANUSCRIPT

Manuscript volume. (UK:Lbl) Add MS 32530 is a quarto volume bound by the British Library. It begins with the text edited here (ff. 1–111v), which has the running title, centred, 'Of Etimology', on most, but not all of the pages. From ff. 112 to 152 (f. 152v is blank), the contents include 'conjectural' etymologies in the form of word lists, short notes and drafts.⁹ On a few fragments North has used as scratch paper Francis North's notes on motion; and because a number of other folios are scored through, these discards also may have been reserved for scratch paper.

Physical features. 'Of Etimology' has two sets of pagination. One set was provided by North himself and occurs on the upper right- and left-hand margin of both recto and verso until f. 89, when the numbering is placed above and at the centre of the running title. The other set, added by Montagu North, is found only on the recto of each leaf, mostly, but not always, centred above the running title and, from f. 89, placed above his father's centred pagination. Both sets of pagination are excluded from the edition, even though these features may provide important clues about the extent of Montagu's

⁹ For ff. 112–152v, see further *NP* 4, p. 79.

interference in the text, as well as the relationship between 'Of Etimology' and the contents of (UK:Lbl) Add MS 32529.

Unfortunately, a number of leaves are badly torn and the ink faded, possibly from water damage. The most serious damage, which affects both text and original pagination, occurs on ff. 1–4, 20–24v and 58–59v. Although 32529 contains some drafts for the copy text, North never slavishly repeats himself when rewriting, as his son discovered when attempting without success to supply from 32529 missing portions of ff. 1–4v. And since ff. 5–7v and 84–88v are entirely in Montague North's hand and use his spelling (e.g., 'common' rather than his father's 'comon'), it is possible that these folios are replacements for other damaged leaves.

'Of Etimology' shows varying degrees of emendation (deletions and insertions), ranging from very frequent (ff. 67–83) to almost none at all (ff. 84–111v). No determination can be made about the folios in Montagu North's hand (ff. 84–88v), because the original from which he made his copy does not survive. However, the evidence suggests that the final two sections (ff. 89–111v) had reached a more or less finished state, whereas the other sections are in differing stages of completion.

Section 1 (ff. 1–4v) has been omitted from the edition because of extensive damage. Sections 9 and 10 (ff. 67–83), though undamaged, are also omitted for a number of reasons. In the first place, a comparison with 32529 indicates, first, that there is no previous draft for section 9 (ff. 67–77v) and, second, that the draft for section 10 (ff. 78–83)—if it is indeed such—is more polished.¹⁰ In the somewhat rough form in which sections 9 and 10 of the copy text are now preserved, they seem not only to be drafts (perhaps for another purpose) but also to digress from North's main purpose. In my judgment, therefore, the omission of these two sections does not affect North's argument but actually helps to make it clearer.

¹⁰ It is more probable that the 'draft' for section 10 represents RN's preparatory thoughts for the digression in the *Examen* discussed *supra* Chapter 1 sect. 1.2.

Relation to North's other writings. Although 'Of Etimology' has a close relation to parts of (UK:Lbl) Add MS 32529,¹¹ a number of North's other British Library manuscripts contain short notes on words or on language usage.¹² These include two manuscripts written during the same period as 'Of Etimology'. One is the 'Vocabulary' of accounting terms in 'The Gentleman Accomptant' (UK:Lbl) Add MS 32528: ff. 2–94, the whole of which was published anonymously in 1714.¹³ The other is North's annotations to two elementary music treatises by François de Prendcourt, written between c.1710 and c.1716, the epistolary dedication to which is apparently a copy of a letter North had sent to Hickes.¹⁴ During the period when 'Of Etimology' was in process of writing, North also worked on a number of other texts that resulted in what might be called 'cross-fertilisation'. These include an essay entitled 'Reason';¹⁵ the posthumously published *Examen*, completed by 1713;¹⁶ and some unpublished versions of the lives of his brothers, especially the 1709 version of the life of Dudley, the brother who was the main, but not the only source for North's information about aspects of the Turkish judicial system.

Dating. Mary Chan identified the watermarks on paper used for 'Of Etimology' as follows:

- ff. 1–4v—shaded shield/DP
- ff. 5–7v and blank leaf following—pro patria (2)
- ff. 8–83v—shaded shield/DP
- ff. 84–88 plus following blank leaves—pro patria (2)
- ff. 89–111v—shaded shield/DP.

¹¹ See *infra* Appendix A.

¹² See *NP* 4, pp. 65, 76.

¹³ See *infra* Appendix B: [NORTH] 1714.

¹⁴ See *NP* 6, pp. 43–152, particularly the entries in the analytical index under the headings for 'English Language', 'Usage', 'Words'.

¹⁵ For the date of this essay, see *infra* References: Manuscripts.

¹⁶ See *infra* Appendix C: NORTH 1740.

She suggested c.1703/4 for the date of shaded shield/DP and 1730 for the date of pro patria (2).¹⁷ But she based the former date on one letter only, written on the same paper, so this date is not reliable. Unfortunately, the pro patria (2) paper provides no assistance in dating the text either, because the folios where it occurs are all in the hand of Montagu North. In general, therefore, paper dating is inconclusive.

Francis Korsten supposed ‘with virtual certainty’ that ‘Of Etimology’, as well as (UK:Lbl) Add MS 32529 can be dated between 1703 and 1705.¹⁸ He provided two pieces of evidence for this supposition. First, he cited North’s statement (32529: f. 131v) that Hickes was ‘now publishing a Collection of the Septentrionall Antiquitys’, that is, his *Thesaurus*. Then, he drew attention to two letters written by North’s brother Montagu on 11 Nov 1703 and 5 Feb 1704, on the back of which there is, in North’s handwriting, a table of contents for both 32529 and 32530. Both pieces of evidence, however, are problematic for at least three reasons. First, the statement about Hickes in 32529 appears in a portion of that manuscript that represents North’s ‘second thoughts’ on the study of the law, not his ‘second thoughts’ about ‘Of Etimology’.¹⁹ Second, Korsten did not consider the possibility that North might have added the table of contents at a later time by using the two letters as scratch paper. Finally, because he made no systematic study of North’s manuscripts, Korsten was completely unaware of North’s practice of testing his thoughts by writing and rewriting.²⁰

As is evident from Appendix A, certain portions of 32530 are revisions of portions in 32529. North, therefore, must have begun

¹⁷ See *NP* 4, pp. 48–53, 61–2.

¹⁸ See Korsten, *Roger North*, p. 61.

¹⁹ See *infra* Appendix C: NORTH 1824.

²⁰ Circumstantial evidence suggests that the 32529 draft for section 8 may have been written during RN’s early period, because the first word in that section’s title—‘Notes’—recurs in a number of writings from that period; see, e.g., RN, *Cursory Notes of Musicke*; ‘Cursory Notes of Building...’, *Of Building*; ‘Mechanick notes’ (UK:Lbl) Add MS 32540: ff. 81–118v; ‘Some Notes upon an Essay of Musick’, pp. 179–200.

some of his revisions after the relevant portions of the earlier draft had been completed. Unfortunately, that draft, as well as the discards from North's 'familiar' essay offer little hard evidence for a date when North might have commenced or completed his revisions. That 'Of Etimology' was composed sometime during the eighteenth century is substantiated at f. 60, where North writes, 'our age, and the last', 'the last' meaning the seventeenth century. And only one piece of evidence suggests a *terminus ad quem*, for at f. 87v North refers to 'Mr' Robert Molesworth, who became first viscount in 1716.

Critics tend to forget that North had numerous writings in train all at once, as well as many personal and professional duties to an (extended) family and to some of his neighbours. Moreover, he participated in the improvements in agriculture and estate management that made Norfolk one of the most progressive counties in England.²¹ As a consequence, it is highly probable that North composed portions of 'Of Etimology' at various times.²² Tentatively, therefore, I would suggest assigning the beginning of his revisions to c.1706²³ and the completion of them to c.1715, leaving open the question whether or not interpolations were made afterwards either by North himself or by his son Montagu.

EDITORIAL GUIDELINES

The guidelines, itemised below, are based on principles worked out in previous editions of North's writings on sound and music. These

²¹ See, e.g., *infra* Appendix B: [NORTH] 1713 and 1714. According to Wilson, *England's Apprenticeship*, p. 153, the estates of the 'upper Norfolk gentry ... were at this period the foremost nursery of rural improvement'.

²² For evidence of a similar pattern in his writings on music, see *NP* 2, 3, 5, 6.

²³ This date is based on circumstantial evidence: (1) RN to George Hickes, 12 October 1705 (UK:Ob) MS Eng. Hist. b.2: ff. 222–223v regarding the pre-history of the common law (see *supra* Chapter 3 sect. 3.4) and (2) RN to Philip Foley, 22 December 1706, RN, 'Letters', pp. 254–5, regarding Horace (see *supra* Chapter 1 sect 1.4 and RN, 'Of Etimology', note to f. 30v).

guidelines are applied not only to the copy text but also to North's other unpublished writings quoted in this study.

Foliation. At the appropriate places within the text, the foliation of the manuscript is indicated in bold type enclosed in brackets. This foliation is used for all references to the edition not only in the foregoing study but also in footnotes to the edited text.

Capitalisation, italicisation and paragraphing. All sentences begin with a capital letter regardless of North's practice. Capital letters mid-sentence, apart from proper nouns, are changed to lower-case. Italics are reserved for foreign words and expressions (e.g., '*instar omnium*') or for book titles. However, roman is retained for 'Bible', 'Gospel' and 'Alcoran'. North sometimes writes in long paragraphs that extend over a number of pages, especially in the more unfinished or unpolished portions of his manuscripts. When sense requires it, therefore, paragraphs are added.

Spelling. Although North's spelling is often consistently irregular, his spelling is retained, including 'Hales' for Matthew Hale, 'president' for 'precedent', 'then' for 'than', 'porpose' for 'purpose', 'latter' for 'later', 'caos' for 'chaos', 'wives' for 'wives'. When necessary for sound or sense, a letter is added in square brackets, e.g., thro[w], chang[e], strang[e], yo[u]ng, hon[e]y. The use of apostrophe 's' for possession is standardised; but the use of apostrophe 't' for past tense or past participles is retained, e.g., publish't. When the apostrophe 't' is not used (e.g., profest, adapt), it is added only when sense requires it, e.g., 'past' becomes 'pas't'. When North uses accents on certain words (e.g., 'palatinè'), these accents are treated as part of his spelling.

Contractions. All abbreviations and contractions are expanded; e.g., 'N.E.' becomes 'northeast', N.B. becomes '*Nota bene*', 'ye' becomes 'the', 'qu' becomes '*quære*' (i.e., query), 's' becomes 'shillings'. In Latin phrases the abbreviation '&' is retained; otherwise, it is expanded to 'and'. With the exception of statutes, Latinised and abbreviated forms of the names of kings are written in full in their

English form (e.g., 'K. Ch.' becomes 'King Charles'). Abbreviations of proper names are also expanded (e.g., 'Wm' becomes 'William'), whereas abbreviations still in common use are retained (e.g., 'Dr.'). In the case of '&c.' and 'vizt.', these are given in their modern form as 'etc.' and 'viz.'.

Punctuation. All full stops are dropped from section headings in a text. On the few occasions when North uses direct speech, single quotation marks are added without comment. For lists and for 'viz.', 'that is' and 'nay', a comma is added without comment. North uses an equal sign '=' for words which are broken at the end of a line in the manuscript; and in these cases, the word broken is treated as one word. For hyphenated words North uses an en-dash '—', and this is retained, even where modern usage might not add a hyphen. Where punctuation is altered to conform more to modern practice, the principal guide has been clarity of meaning, especially when breaking a long sentence at a colon or semi-colon; when replacing a colon with a full-stop, a semi-colon or a comma; or when removing commas that seem more like a pause in North's thinking. All other editorial punctuation is given in square brackets.

Errors. Obvious slips of the pen are emended without comment. These include confusion of homophones such as there/their, to/too, of/off, 'falls/fals'. The edition represents North's own revisions at ff. 47 and 47v, where he indicates changes in the ordering of clauses and phrases within a sentence by underlining the portions he wishes to place elsewhere and numbering them with a superscript '1' and '2'. Sometimes North omits a word either inadvertently or because of hasty writing. When this occurs, an appropriate word is inserted in roman and enclosed in square brackets, '[which]'. When foreign terms or phrases are misspelled (possibly because North spells from sound), the misspellings are retained in the edited text and corrected in the Glossary.

Damage. As previously noted, some portions of the manuscript are torn, faded or blotted with ink, resulting in missing or obscured portions of the copy text. Very occasionally, (UK:Lbl) Add MS

32529 has been helpful in supplying some of the missing words, although most have been filled in inferentially. In both cases, the missing or obscured portions are indicated by italicised words or parts of words enclosed in square brackets (e.g., '[savage]') in order to distinguish them from other editorial additions.

Footnotes and glosses. Footnotes are used for a number of purposes, including cross-references within the text or to other writings of North; interpretation of difficult or hastily written passages; comments on the manuscript itself, e.g., those few occasions when North adds a marginal note, 'qu', i.e., '*quære*'; identification of locations, persons, books, fables, quotations from literary works and proverbial expressions in English. With the exception of the word '*quære*', terms to be glossed are identified in the text by an asterisk and glossed in the Glossary. When a word glossed occurs several times in one folio, it is given an asterisk at its first occurrence but not at subsequent occurrences in that folio. In glossing foreign terms, dictionaries in Latin or other foreign languages were consulted. In glossing English terms, the sources consulted were (1) *The Oxford English Dictionary* (OED); (2) *Mozley & Whiteley's Law Dictionary* (M&W); and (3) Baker, *An Introduction to English Legal History* (Baker).

Particular attention has been given to terms or phrases that are not in current usage (i.e., they are archaic, obsolete or rare) or whose usage is different from that current or where North's usage is either earlier or nearly contemporary with the first use of the word or where his usage is in advance of the first use of a word. When words or phrases are not found in the OED or when the OED gives North as the only source, these are identified by the term, 'Northism', even though North's usage may reflect contemporary, colloquial or local practice.

Illustrations. At ff. 41 and 42v North provides two tables which in the edition appear as two separate illustrations. At f. 41 I have retained the layout of North's presentation (*see infra* Figure 7). But at f. 42v I have substituted a page from Charles Butler's, *The Principles of Musik*, in which the printer, John Haviland, explains

Butler's simplified system of phonetic spelling. This page is the source of North's table, which is a slightly abbreviated version of the indented portion of Haviland's explanation (*see infra* Figure 8).

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ADDITIONAL MANUSCRIPT 32530: ff. 5–111v

[f. 5]¹

2. Justification of the common etymology

I shall begin to discours of the common etymology and to examine the quality and condition of it and how farr one may without scandall profess such a seeming empty criticisme as deals in meer [vocal] sound and characters. First let us consider that mankind is allways desirous of knowledge.² Wittness their precipitous pursuit of news and noveltys, and ioy in the *concept of having caught (as they think) a truth. And this is not all on account of substance or value, with respect to the affairs of life, but also in matters triviall, and of no signification at all, but for the meer sake of knowing somewhat they did not know before. How else could a new monster or spectacle at bear-garden empty an assembly, mett for the greatest affairs of common concern, as happened on this side [of] the moon. The eyes are more trusty informers than [the] ears,³ and the truths of bear-baiting are more penetrating than those of grave debating.⁴ This is an

¹ Regarding ff. 1–4v, see *supra* Introduction to the Edition. Note that ff. 5–7v are in the hand of MN (2).

² Cf. Hobbes, *Leviathan*, p. 124, for whom curiosity is the name for mankind's 'Desire, to know why and how', a desire that is 'in no living creature but *Man*', who is 'distinguished, not onely by his Reason; but also by this singular Passion from other *Animals*'. Note that Hobbes's definition covers the desire for knowing *why* and *how* but not for knowing *that*.

³ Cf. RN, *The Gentleman Accomptant*, p. 243: 'in Manufacturies the Precepts are couched in the Observation of the working, and the Eye is a better Instructor, than the Ear'.

⁴ In writing about his parliamentary experiences, RN, *Notes of Me*, p. 232, also compares the noise of the crowd in bear gardens to the 'nois, and importunity upon wording of the questions' in parliament. For bear-baiting, see also *infra* f. 39.

odd, but true proof of the maxime[,] **Magna est veritas & praevalabit.*

This serves to extenuate [f. 5v] if not to satisfy the seeming vanity of etimologising. And however that study lies under some such prejudice, and is by many thought a slight or impertinent amusement, it hath been found in all ages and places of any literature, that the most curious and nice scollars have courted it, and therein found delight enough to compensate their infinite pains. Silver and gold never payd for all the lexicons, glossarys and criticisms that are extant, and were done for no wages, but what truth pays. All which could not have been if there were not a secret pleasure in every instance of discovery, fancy'd to be made of things not obvious or taken notice of before.

Those who have no great esteem for the study of meer words will say, 'what good is it to know how a word is derived or compounded, if it have a determinate and known sence, so as to fall in common use without any ambiguity or obscurity?' Especially considering, that the accepted sence of words, as was hinted,⁵ doth not always follow the etimology. And however limpid the meaning of the **radix* or the originall formes may be[,] such alone are not⁶ sufficient to [f. 6] enucleate the full force and meaning of a vernacular word. But in all such disquisitions the finall resort is to common usage as the sole arbiter in all causes of speech or languages. And, what is yet worse to charge on the professors of this science is, their criticisms[,] like grammar, heraldry, antiquity and physicks, are most seriously apt to run into pedantick nicety, so much beyond all manner of use or probability as to be ridiculous. Some will have meanings out of sound, as *senex* from *semi-nex* [and] *agreamentum* quasi [from] *aggregatio mentium*,⁷ and the like. Others care not for sound at all, but will bring the ends together, or make all

⁵ I.e., at f. 1v (unedited sect. 1).

⁶ MS has deleted 'formes ... not', but, for sense, these words are retained. The word 'formes' refers here to the various modes of pronunciation, spelling or inflexion under which a word may appear, as distinguished from its signification.

⁷ *Semi-nex* is a play on *senex* (old man, half dead), whereas *aggregatio mentium* is almost ('quasi') a play on *agreamentum* (?agreement).

fly; as the late Westminster pedagogue, who brought from the Latine, from **eimī* the Greek, as diaper from King Pippin,⁸ with many such *conceipts as are every day laught at, being more senceless than the old [scholastic] philosophers calculating the stopps of a paratt.⁹ These are the frailetys of common etimology; to which I reply.

1.¹⁰ That I may grant the whole paragraff of objection, and what then? One need not blush at the use of a diversion innocuous (as will be granted) and not tainted with vice, immorality, breach of charity, or of publik [f. 6v] tranquillity, and bringing no inconvenience but the loss of so much time as is bestowed upon it. And [such diversions] may be the rather excused[,] since a harmless employ of time is what the conditions of some men[,] particularly the wealthy and well born[,] most want. It is found by experience that without some such retired injoyment, men of parts and fortune run out after news, libells, plotts, vice, drink, whores, etc.; and so persuing more touchy diversions abroad, *purchase substantiall wants and paines at home, where they are most exquisite, and [their] ease most delightfull. Surely the meanest play of children may be affected with as good an air, as *punk-dialogue in the play-house. Not to name others' entertainment of a higher gusto for fear of offence to the **grand mond*, of whom I will only observe, that if they chance to agree in playing the fool, and do it but after the same fashion[,] honour is safe. For in folly and vanity men of quality are like rotten houses in a row which by a mutuall contact uphold one and other; so they by community of manners support each other's countenance. And it were well if vanity only and not the most [f. 7]

⁸ Pippin [Pépin] was the name of a number of kings, each deriving from Pippin the Elder (CE 615–629), whereas diaper denotes either the cloth or the pattern on the cloth; hence, perhaps, just as words may be derived—brought into being—from a pattern or formula, so may the children of Pippin.

⁹ I.e., the scholastics' tedious concern with irrelevant detail, as in the argument concerning how many angels can stand on the point of a pin or, here, as in the calculation of pitches produced by a parrot. Note RN's implication that a parrot produces pitches in the same way as a flue pipe, which is made to 'speak' by air pressure and to change pitch by opening or closing stops (for an organ pipe) or holes (for a flute).

¹⁰ For point 2, see *infra* f. 11v.

*facinorous practises upon earth fell under this observation, and that fashion did not reign as saucily in the worst of wickedness, as it doth in the most empty of follies.

I shall therefore take leave to conclude that etymology, were it mere playing with words[,] may pass muster as no *incommendable idleness. And as for those excuses which often make it appear ridiculous, they must be ascribed to the misconduct of some that profess it, rather than to the thing it self, which used with ordinary *discretion will give no such occasion. Many will trifle away time, and be sensible of their levity, and yet be pleased, but forbear therein to importune others. And some are so stung with *conceit they cannot help teasing their companions to congratulate their *fatuate hits, in things they esteem less than trifles. What can such expect better to be thought of themselves. But the witts who spend their little mornings in paring and filing similes, and empty antithets, to make them glissen a little will like [them] to be vented at Will's¹¹ or [at] The Rose in the afternoon.¹² Or a comick poet that having sprang a jest, spends [f. 7v] a week to spin it out, and nauseate the town with a whole scene of it. And others¹³ [f. 8] who are tickled where words and¹⁴ syllables clinck and jangle, as formerly it was a mode to clap a rime (as consonancy of words is sillily called,) upon whatever was spoken, and then laugh.

These triflings will appear in all affairs, wher[e]in they are promiscuously concerned; [for] the performances [of wits and poets] will be tintured after their characters. And nothing can be under

¹¹ I.e., Will's coffee house on the corner of Bow and Russell Streets, London. It was the main resort for wits in the time of John Dryden and also for some years after his death; see Timbs, *Clubs and Club Life*, pp. 315–22.

¹² Of the several taverns or coffee houses called 'The Rose', RN probably refers to one on the corner of Russell and Bridge Streets, Covent Garden, which was frequented 'by courtiers and men of letters, of loose character, and other gentry of no character at all'; see Timbs, *Clubs and Club Life*, pp. 429–31.

¹³ MS has 'Vide Page 17' written below the catchword ('who'). The rest of the page is blank. The following page is also blank except for the number 16. The British Library foliation does not include this page or the one following (its verso), which is completely blank. The text resumes on f. 8, i.e., 'Page 17'.

¹⁴ MS has 'words and' inserted above the line and in the hand of MN (2).

such value, as a foolish application and use will not make appear ridiculous; which is a most naturall, as well as an affected bantering of good things. Therefore wee allwais ought to make a distinction between persons and things, manner and substance. And accordingly wee must affirme that a critique of words and language is a very usefull profession, notwithstanding some folks are vainely puffed with it, and cannot forbear being importunate and obtrusive of their discoveries. Nor doe I herein preferr the laughers,¹⁵ who comonly are the *arrantest *fopps of the company. They care for nothing but materialls of banter, and to catch advantage of depreciating [f. 8v] everything good or bad without distinction. But this is a strong faction, whom it's dangerous to offend, and therefore wisely steal away.

Things in themselves *indifferent become practically good or evill according as men happen to use them. And some [things] may be particularly usefull in retiredment, which in company appear scandalous and impertinent, and even those that use [such things], shall be ashamed of them. For men are so barbarously *injust to one and other, as not to grant that which every one claimes, a prerogative of gusto in pleasure, but translate the carактер of things to persons. And as they relish or despise a diversion, so [they] characterise such as are very innocently well pleased with it. As when any one¹⁶ affects study, and is not talkative[,] he is a dull fool. If he is pleased with tracing the originalls of language, he is a trifling coxcomb. If he be given to mechanicks or manufactories, he is a low-spirited ass. And so throout; which makes it necessary for such as happen to be entertained beside the mode of his rank, to be as recluse as he may. And if he have not [f. 9] that priveledg, he must be armed with a stock of contempt, the onely *artigliery against foolish censure. I knew a wise man¹⁷ that used to say, to satisfie others he gave

¹⁵ For the 'laughers', see *infra* ff. 15–16v.

¹⁶ I.e., RN himself.

¹⁷ I.e., a judge or sage of the law, e.g., FN, who regularly 'gave reasons' for his judgments. See RN, *Life/FN*, pp. 56, 109, 135 *et passim*; see also *The late Lord Chief Justice North's Argument. In the Case between Sir William Soames, Sheriff of Syffolk, and Sir Sam. Barnardiston, Bar. Adjudged in the Court of*

reasons, but for himself, his will was reason enough. This is true as to all things of *indifference, that men use for pleasure or caprice. For there every one is *mufty to give law to himself, but not a pope to absolve others. I shall add an historiett or two,¹⁸ not beside the porpose in hand.

A reverend country gentleman[,] of a good family and estate,¹⁹ used to divest himself [of his clerical robe] and amuse his time with framing anagrams lettered from the names of such persons as he esteemed, or that came in his way, under any such notable circumstances, as gave hints to his fancy. And of these he had compiled as many as filled an huge folio book, which sometimes in a good humour he would shew to his near freinds and family, that either admired or indulged all he did. He had the prudence never farther to publish these creeping trifles, and by that, escaped the imputation of extream levity and *vanity, which otherwise had fallen upon him, purely from the carактер of his private diversion.

[f. 9v]

Another person of a very different education whom I may name being in print, Dr. Duport, late Master of Magdallen College in Cambridg, and Greek professor,²⁰ took a fancy to compose epigrams in imitation of Martiall,²¹ upon most of his acquaintance and cotemporarys. And of these in [1676]²² publish't [a] larg octavo

Exchequer-Chamber upon a Writ of Error, containing the Reasons of that Judgment (London, 1689), where, p. 6, FN lays down the 'Method' he will take in three points, the second being 'Give my Reasons against the Action.'

¹⁸ RN provides four historiettes; see *infra* ff. 9–10v.

¹⁹ Possibly, RN's occasional amanuensis, Ambrose Pimlowe (d. 1750), admitted a sizar at Queens' College, Cambridge (1700), B.A. (1705), ordained priest (Ely 1708), afterwards serving in Norfolk as vicar of Castle Acre (1709–50) and Rougham (1710–23) and as rector of Dunham Magna (1721–50).

²⁰ James Duport (1606–79), D.D. (1660), master of Magdalene (1668) and vice-chancellor (1669). He held the Regius professorship of Greek between 1639 and 1654, when he was ejected by the parliamentarians; and again between 1660 and 1679.

²¹ Martial [M. Valerius Martialis] (d. CE 104), Roman epigrammatic poet.

²² MS has a space for the date to be inserted.

book,²³ in which besides a tollerable Latine poetick style, wee find litle of note, but quibbles and ninny-versity punns, and most in the way of Angliscisme.²⁴ There needs be observed no more but this, the success of his book was the revers of his designe.

There was another country gentleman, of value and eminence,²⁵ who was very fond of a romance he had composed, in which the hero was neither emperor nor king, but a certein cavalier of honour who fancied to travell from one prince's court to another, and carryed along such a winning air that he was every where *in a trice received, caressed, and admitted into familiarity and council, and was most especially graced by the ladys of greatest dignity. After this model all his dialogues were framed: [f. 10] One proposed, he replied, another added, a fourth interposed, a fift[h] subjoyned, and at last he failed not to give the decisive turne in all the conversations. Under this character [of a cavalier of honour], he couched his owne dear self; in which he was not singular[,] being attended by all the race of the poetasters, who in the fairest picture their witt serves them to draw, aim to commend themselves. He was master of a good English style, of a ready witt and pen, and lived in extraordinary repute. He served his country in all the posts of justice and trust; and therein acquitted himself to their satisfaction, and at elections seldome had a competitor. But had this unhappy peice ever bin, as was designed, made publick in print, that one mistake in the way of vanity had subverted all his reputation and interest. Yet while it lay quiet in his cabinett, comunicated onely to freinds and of those, choice and few, it was accepted with *salvo to his credit, as being done for solitary pastime, and exercitation of his fancy and pen. Altho it was most manifest that his onely designe was to make

²³ I.e., *Musæ Sibsecovæ, seu Poetica Stromata* (Cambridge, 1676). It includes a 'flattering' epigram on JN, which is translated with a brief comment by RN, *Life/JN*, pp. 121–3.

²⁴ I.e., Anglicism, the introduction of English idiom into a sentence in another language.

²⁵ Although RN provides a number of clues, I have not been able to determine with certainty the identity of this 'country gentleman', who not only 'served his country in all the posts of justice and trust' but also travelled abroad 'on great occasions'.

himself illustrious, by owning a character he was ambitious [f. 10v] of, or as he thought himself capable to merit and maintaine on great occasions abroad.

I shall touch but one person more, whose printing warrants us to name him. And that²⁶ is Sir William Temple,²⁷ an author whom party and witt conspired to make eminent. In all his wrightings, his constant method was to depress others, and rais himself.²⁸ And in his last peice, about his state transactions, he hath a new invention, unknowne to ancient and moderne poets[,] of making 2 heroes, of which one was (not his master the good King Charles 2²⁹ but) his prince,³⁰ the other himself. And in the conduct of his Illiads, [he] deals his eulogys so liberally, that it is fulsome and offensive to read 'em. He bore about him the tokens of an uncomon *vanity, for he had a strang[e] infelicity in the garb of his person, which was fantastically active enough to create suspicion of insanity.³¹ As for his wrightings in generall, they shew'd he had dipt in all subjects but

²⁶ MS has: 'I shall touch but two persons more..... The first'. Since no second person follows, I have emended accordingly, although RN may have planned to add a second person, since the word 'two' is written over the word 'one'.

²⁷ William Temple (1628–99), bt. (1666), diplomat and author. Elsewhere, RN describes him as 'a serious and grave Writer, never suspected of falsifying matters of Fact'; see *infra* Appendix B: [NORTH] 1711 (p. 25).

²⁸ RN, *Notes of Me*, p. 160, writes similarly about FN's method 'of raising his owne, by depressing' not only RN's but also others' 'characters'.

²⁹ Charles II (1630–85) king of Great Britain and Ireland, crowned 1660. In his account of the king's actions as a 'public Character', RN, *Examen*, pp. 656–57, owns 'that, according to the Gospel, as well as moral Duty, that obligeth us not to speak Evil of Dignitaries ... I have not been particular as to some personal Failings' (though he goes on to mention some).

³⁰ I.e., the Prince of Orange, afterwards William III (1650–1702), king of England and Ireland (1689–1702). Temple became acquainted with the young prince during his first embassy to The Hague in 1668, a post that was renewed in 1674.

³¹ Temple's dress conformed to his opinion that wealth depends upon frugality; see his *Observations upon the United Provinces of the Netherlands* (London, 1673, various editions). In 1714 his opinion was satirised by Bernard Mandeville in the first edition of an essay published anonymously; see Mandeville, 'Remark Q', *The Fable of the Bees*, vol. 1, pp. 181–98.

not drawne up enough to make his readers ever the wiser.³² If his person had never bin seen, nor his books printed, he might have pas't for a great statesman. **Nota bene*.³³

I mention these *passages, which are reall and not romance, as examples **pro* and *con* of just measures, to be observed, in the conduct of private speculations, such as may not in themselves be illaudible and yet not conforming with the generall palat, will not peep abroad *impunely. And of [f. 11] this sort is etimology, which [one in private] may injoy, but not profess, without a counterpois of other more reputable skill. I doe not here labour to justifie or excuse impertinents; [for] no art or study is priveledg'd from *foppery. And there may be nothing of this as of other species [of impertinents], whom I leav to their dame fortune, desiring onely that censure may not recoyle from such persons, and their [lack of] *discretion, upon the art itself and so condemne it as mean logomachy, or debate of empty sound.

Yet I must observe that in this very method [of private speculation,] the art hath an advantage. And it is from the numerous traine of most deserving persons, who have dedicated most of their time to it, and therein have imployed not onely assiduous paines but [also] exquisite judgment, sagacity and invention. And all done with *modesty and sincerity, aiming if possible to resolve dark misterys of antiquity, of which wee have no **vestigii*, but in abstruse words and characters; and in many of these [studies] so happily as to have made their resolutions seem plaine and obvious. And here wee returne the

³² RN's allusions to Temple's works are obscure; perhaps: (1) 'last peice, about his state transactions', i.e., either the various collections of letters relating to diplomatic life or the posthumously published *Memoirs*.... (London, 1715); (2) 'his Illiads', i.e., the surveys of the different governments of Europe and their relation to England; and (3) 'wrightings in generall', i.e., the several volumes published between 1680 and 1701 with the title, *Miscellanea*, which included (a) ten essays that began the English version of the ancient/modern controversy, and (b) an essay on the origin and nature of government, written 1671, that anticipated the patriarchal theory of Robert Filmer, published posthumously in 1680 and which RN examines critically at ff. 79–81 (unedited sect. 10).

³³ I.e., referring perhaps to the concluding sentence as the moral lesson to RN's four historiettes, *supra* ff. 9–10v.

reflection and argue a value to this art, from the merrits of very many deserving persons as have professed it.

[f. 11v]

[2.] It may be farther urged against us, that this sort of study is a slavish drudgery, inconsistent with brisk and gentle parts, fitt for low spirited animals of an asinine temper, that bear, and perhaps delight in burdens. And let all such dig by themselves. The very thought of them is nauseous to witt and ingenuity. In answer to this calumny (rather then objection) wee will admitt this study to be jejune, and scarce usefull, but to very few, and those by the witts also despised. Or let it be a profession no less abject then the meanest handycraft, as cobbler or tinker, yet such as excell in their way ought to be esteemed. What can humanity advance to gaine approbation, but [by] excelling in what is progressed? I admitt also that an *etimologiser is a sorry instrument to help ambitious people into prefferment. The science will not make parliment men, nor those [who] vote as interests or factions[,] move. And if these truths, jejune as they are accounted, are not agreeable, the professors doe not crouch, cring[e] and sneer to gaine them acceptance, but have as much contempt for the practisers of that sort, as they can have for push-pin; and therein all partys are accorded.

[f. 12]

3. Etimology, as other criticall studys, are very vsefull in the world

But I intend not to lett pass so slightly [the objection], that our ordinary etimology, or meer critique of words is but an empty or vaine curiosity, of no use in the world,³⁴ being about to demonstrate the contrary and to shew that these studys in the way of crittiscisme, how starved soever, such as have no pleasure in industry and discovery may esteem them, are not onely usefull, but often necessary to the dispatch of the most important affaires. And that it is a felicity in the way of all knowledg, that there have bin, are, and probably ever will be, some who are *philolethes, and sequester

³⁴ See *supra* ff. 5v–6.

themselves from easy and gainefull studys, to exhaust their time in extricating abstruce subjects, such as cronology, antiquity, and languages. And all for no better reward then the adding a truth or two, as they hope[,] to the stock that is already in the world.

I know very well that few even of them who are bookish care for this laborious cours. For men that serve had rather be pages and valets then³⁵ [f. 12v] cooks and brewers, tho the latter are more necessary to the subsistance of the family. Our *comfort is no particular person's relish, [yet it] is decisive of good and evil, usefull and unprofitable, [and is] the nature of things on which leans all reall vertue and prais. I remember a wild gentleman walking thro [Saint] Paul's churchyard, sayd to his companion, 'I wonder how these dambd booksellers live. For by [God,]³⁶ I never bought a book in all my life.' Many persons have as mean an opinion of criticall studys, as he had of books; and all conclude with reason alike.

But to discuss this matter a little more diffusedly[,] let us devide the whole race of mankind into three *sortments: 1. learned, 2. unlearned, 3. barbarous.³⁷

1. The learned, if they have any ingenuity[,] must owne the light of their eys to the critiques. Are not their performances ever in their hands, that is, corrections and emendations, as well as interpretations of old authors. Resolving and applying ancient medalls and inscriptions; examining cronology; exposing impostures and fictitious authors; [f. 13] collating ancient history, geograpy, and topograpy, besides an infinite mass of notes, coments, etimologicons, glossarys, lexicons; hunting after old manuscripts and fragments. And from evidences drawne out either from unthought of corners, or the subtilty of their braines, disprove errors in the past, and add new and surprising accounts of persons and things; as if their sagacity and indefatigable industry were provided for posterity by providence, to

³⁵ MS does not carry over the catchword ('then') at f. 12v.

³⁶ MS has several dashes instead of the proposed word.

³⁷ For the learned, see *infra* ff. 12v–15; for the unlearned, see *infra* ff. 12v–18v (where this class is subdivided into two sorts—the arrogant and the modest); for the barbarous, see *infra* ff. 19–21v.

supply the generall oscitancy³⁸ in the lives of most men who take no care to prevent their memory perishing with them. It is most certain that no man's life in study can comand all these subjects he hath occasion to know. And no one subject can exhaust the content of a student's mind, without more or less calling upon every other subject in the class of learning, to give it perfection. Such a chaine is there in knowledg, as in naturall causes of things, which have perpetuall coherence, and all finally depending on the first and comon principles of things.

Therefore[,] as I say'd[,]³⁹ it is a felicity [f. 13v] to all persuit of knowledg, that on every occasion men can readily repair to the works of the crittiques for an account of most difficult and unobvious studys. It is but procure the books, and inspect them, and strait reap the fruit of other men's infinite paines and invention. And this great advantage is had by men who, with all their application and paines in any one branch of crittiscisme[,] could never have procured, what they find in books ready drawne up from the bowells of darkness, refined and made intelligible, and so[,] fitt for their capacitys. And hereby all the ends of learning are answered.

If wee suppose a mighty pile of building to be raised, it would goe on sorrily, if onely speculative architects were to labour at it. Therefore men are chosen out, and imployed, after their capacity, to labour in the many severall sorts of work, till the whole is closed. So it is in the fabrick of learning. All men are not fit for all subjects[,] but many are by nature and genius prone to some particular sort, such as antiquarys, crittiques, mathematitians, etc. Some are made for searching, others for iudging; those that are most competent [f. 14] for the one, as to the other are often altogether inept. Iudgment is not had by allwais poring upon any one subject, but by a comprehension of many, so that from perpetuall collation of things in their minds, they come to discern their natures and differences. Therefore the crittiques labour to raise the ore, and the men of freer speculation

³⁸ I.e., indolence.

³⁹ See *supra* f. 12.

refine it, the endeavours of each reciprocally assisting each other, in obtaining the generall ends aimed at in the world.

Besides life it self doth not give time to any one person to prosecute effectually any designe in study, without these auxiliaries. I might say ages have not [been] sufficient. For which reason it is necessary that the buisness be distributed out to among such whose zeal, as well as capacity promise a good account of what they undertake. When those who are most capable undertake too much, the result is not knowledg, but disorder and confusion; as was say'd of a French pedant, that had all books almost by heart, and yet was no scollar: his head was **un bibliotheque renversee*.⁴⁰ All which demonstrates [f. 14v] how necessary it is that men should be wholly sequestred, as many spontaneously are, to persue and trace the utmost recesses of every dark and criticall subject. Somewhat will arise from their industry, beneficiall to those who are in like manner imployed in other [work]. So tradesmen supply each other's occasions, of whom no one however ingenious and industrious, without such help, could supply himself.

And as to the critiques, I may, with peace to the grand superintenders of witt, affirme that most, if not all, the knowledg in the world (as hon[e]y to the bee) is owing to their industry and perseverance. And even those who convers most with their works, and thence extract the marrow, and by assimilation, make it look like their owne, are accounted the ablest scollars. And in this eulogy of critiscisme, I must not forget to declare particularly in favour of that which deals in language, as claiming a full share. For it is thro [learning] languages, [that] wee come at things. And since it was thought worthy a miracle,⁴¹ inspiring the Apostles to preach to all nations in their proper language, it is surely not unworthy the utmost force of humane endeavours to obtain to⁴² [f. 15] a like skill, tho by the comon means of drudgery, since if rightly used, it may, and most

⁴⁰ I.e., a saying in *Le barbon* (Paris, 1648), a satire on pedantry by Jean-Louis Guez, seigneur de Balzac.

⁴¹ I.e., the Pentecost, Acts ii.2–13.

⁴² MS does not pick up the catchword ('to') at f. 15.

eminently doth yet subserve those great ends,⁴³ as well as conduce to the increas of secular knowledg in the world.

2. As for the unlearned, or the less or secondary learned part of mankind, that is, the cominalty,⁴⁴ and such as are not much addicted to books, yet [they] have a sort of traditional knowledg of most ordinary subjects, which learned men have refined and digested. And thro the means of books primarily, then by conversation, propagated occasionally among the generallity of mankind, they⁴⁵ have the honour to be distinguished from **barbares*; as there is a difference between such as see by a reflected secondary light, and such as have none at all. It is obvious enough, that all advantages of learning in the world is more or less derived to these [unlearned], whom I will distinguish into two sorts: 1. the arrogant, 2. the **modest*.⁴⁶

[2.]1. As for the former, especially those of the better extract, they are such as have had from the piety and care of parents, or freinds, the ordinary advantage of education, which made them capable [f. 15v] of improvements, if their genius had bin so kind to urge them to it. But being qualified to pass their time with the bigger **vulgar*, soon set up for originalls; and what with early whipping, and latter conversation, they have imbibed a feint tinct of most sorts of comon erudition. And know that Moses was before Christ; and that Alexander⁴⁷ and Caesar⁴⁸ in their time made a great havock somewhere; that the Romans were an huge great comonwealth, and at length fell to be governed by armys and [by] the comandars in cheif called emperors. Having travelled, they can tell which way

⁴³ I.e., transmitting the Christian revelation, religion or dispensation; see Matthew xxviii.19.

⁴⁴ I.e., commonalty or the commons collectively.

⁴⁵ MS has 'by which they'.

⁴⁶ For the arrogant unlearned, see *infra* ff. 15–16v; for the modest unlearned, see *infra* ff. 17–18v.

⁴⁷ Alexander the Great (356–323 BCE), third king of Macedonia.

⁴⁸ C. Julius Caesar (c.102–44 BCE), Roman dictator, considered one of the greatest men of antiquity, gifted with varied talents and distinguished by extraordinary attainments in diversified pursuits.

France lys, and that popery hath a great stroke in Italy; that Venice is a politick state, and hath a duke, a fit modell to make kings of England by;⁴⁹ that Holland is a common wealth; and [that] the Ukraine is not in the Palatinate. And at this rate, by perpetuall company keeping, they are instructed with scrapps and names of somewhat to thro[w] out, like, as they thinck, what they have heard others of more knowledg chatter. And most audaciously in the caus against Christianity and comon honesty, but for want of apt furniture to uphold that debate, they take up with railing against [f. 16] all serious studys, composedness, and vertue.⁵⁰ Every grave person is a solemne ass, and if honest, a coxcomb. Treachery and lying is witt, and all that are caught in that trapp, dull fools. Saying grace [is] impertinent; the sight of a parson nauseous, and fitt to make one refund a meal. Thus armed with a parrottine way of talk, [the arrogant unlearned] make shift to impose on such as know them not, who at first sight doe not perceiv that what they babble is not their owne, and so mistake them.

It is no less true, then strang[e], that folks bredd in good company shall by memory and imitation talk as if they understood notable things, without any graine of true sence in them. And such are these, whose braines are more raggs then patchwork,⁵¹ for that hangs together. They are not dunces, but wors. For those pretend litle, gather slow but sure; [whereas] these are shaddows of sence, by which you may guess, the substance is not farr off, but you find it not there. It is one of their peculiar excellences, to arrogate the scrapps they gather to the strength of their owne braine, as if they invented

⁴⁹ Perhaps ironical, if the conquest of England by William, duke of the Normans, is implied.

⁵⁰ I.e., the arrogant unlearned are RN's 'raillieurs'; see *infra* f. 17.

⁵¹ I.e., *cento*: (Lat.) a rough-and-ready blanket stitched together from scraps of old material lying around. Hence, just as the brains of the arrogant unlearned consist of 'raggs', so too their utterances are entirely fabricated from scraps taken from the works of more studious persons. In the decadent days of Greece and Rome, the term '*cento*' referred to poetry made up of lines borrowed from established authors. But RN's meaning is closer to that of Hobbes, *The Elements of Law*, p. 63, according to which it is a folly (mental defect) 'for a man continually to speak his mind in a *cento* of other men's Greek or Latin sentences'.

all they utter, and perpetually deride the true authors of what they would be thought to know, men retired, studious, and *modest. [f. 16v] Had it not bin from such, these men had bin more wretched then the most brutish savages, and as they are[,] have not much advantage of the better sort of them. The sun's influence in the center of a milstone is more luciferous, then learning is warme in these men's apprehensions and discours. If it signifie any thing, it is but as the faintest of resemblances, nothing of the efficacy or vertue. What shall I call it? A corruscation just seen thro their impertinence, as stale fish and rotten post in the dark. And now at parting, to oblidge them with another simile: they are like wasps, whose nois is importune and troublesome as well as their actions bold and sawcy; you[,] being too buisy with them, may chance to be stung with some brutish affront, but it is no hard matter to drive them away. Whither these men approve, or not, you will allow, in reality [that] imports litle. But regarding comon fame[,] they are a considerable body serving in the *divelish quality of runners up and downe in companys to dispers *mischeif (for good hath seldome that cours). And thus I leav 'em to their haunts, certein coffee houses,⁵² where such as need may find them no less worthily imployed.

[f. 17]

[2.]2. The other sort of these second-handed literati [the modest unlearned] are the generality of indifferent men, who being bredd in civill⁵³ society, and advanced in imployments and buissness, without acquired scollarship, are yet enough knowing, and doe not presume beyond their skill. Their iudgment, as well as inclination disposeth

⁵² Coffee houses were places in which libels were disseminated, chiefly by means of pamphlets; see RN, *Examen*, pp. 138–41, and RN, *Life/FN*, pp. 77–8, 93, 419; see also *infra* f. 49. In *Examen*, pp. 144–70, RN treats the popish plot as a libel; hence, he may have modelled the arrogant unlearned on the pamphleteers organised by the statesman Anthony Ashley Cooper, 1st earl of Shaftesbury, who in 1678 encouraged the popish plot frenzy as a weapon against government. But RN, *Examen*, p. 141, also points to a wider context, when he writes: 'now [c.1709–13] the Mischief is arrived to Perfection, and, not only Sedition and Treason but, Atheism, Heresy, and Blasphemy are publicly taught in diverse of the celebrated Coffee-houses'.

⁵³ I.e., civilised.

them to weigh and know before they lay up. They read ordinary books, hear sermons, harken to discours, and collate all with the notorious and observable actions of men in their time and view. They are not *piquant, nor *raillieurs; I thincke a jester was never found to have worth. They are not apt to thro[w] out, and doing so, it is with designe rather to draw from others then arrogate ought to themselves. In short[,] they use a *discretion and good nature in company, and so without learned improvements, they have the fruits [of learning] rather as merchant importers, then [as] laborious farmers. And it is found by experience, that men thus accoutered in their understandings are fitter for, and dispatch more buissness then profest studyers of it. These are the characters of 2 extreames. I doe not pretend that in such degree they are readily to be mett with; but more or less, one cannot look out without [f. 17v] stumbling on some, in whome it is not hard to discerne their pretensions to place in these descriptions.

I would note once for all, that when I recomend crittiscisme, it is in the cabinet, and not in the **hostel-de-ville*, for in buissness nicetys will ever be found impediments. Practick affairs will move upon gross and not fine spun arguments, neither will persons or things stay for the close of gold-scales deliberations.⁵⁴ Those that are to be dealt with, or to receiv instructions, will not be charged and primed with subtilety, to shoot with any effect. The chariott in the road of buissness must pass as it may. It will never run exactly even, but jumble over all the ordinary rubbs and asperityes vsually found in it; and it suffiseth, that the road be the right [one], which leads to the end, no matter how rugged. And less time and paines is spent in going slower, or tossing, then standing still, while the way is *levigated and all impediments removed, if that were as it is not possible to be done. So great *manages[,] directed on a right principle, are always most effectually performed, without such paltry sollicitudes.

⁵⁴ The 'close' of such deliberations is truth; see, e.g., Alexander Pope, *Dunciad* (1728), Bk. I, line 53: 'Poetic Justice, with her lifted scale,/ Where in nice balance truth with gold/ she weighs,/ And solid pudding against empty praise.'

This ineptitude of critiques[,] as to buisness, is not a litle deminution of their value. [f. 18] It makes them accounted rather **chicaneurs*, then agents, disposed to trouble, rather then [to] foreward affairs. And those who are adroit in buisness are sorry to be ioyned with them, and sigh at their entry amongst them. There is a mistake on both sides, and it consists in not distinguishing between speculation and practis, facultys as different as grammar and merchandise. Therefore each should have his proper post assigned, and then all act without uneasyness or reflection. It must be allow'd on the one side, that the men of prattique originally derive their skill from those of speculation, but their dexterity and dispatch either from a peculiar genius or els [from] experience. So on the other side the men of theory cannot arrive at a dexterous dispatch but from exercitation and usage, but have their knowledg from study. And when both these capacitys are ioyned in the same persons, there is the *culmen of human power, and hath bin eminently made [to] appear in the prodigious undertakings and successes, of some persons recorded in history. Those most celebrated are Alexander and C[a]esar,⁵⁵ both bookish and both *entreprenant and successfull in the most difficult of all worldly [f. 18v] buisness, [viz.,] managing men so, as to make them industrious to compass their greatness thro their owne destruction, the one by rash and ceasless fighting, and the other by civil tumult and sedition; that is, in short[,] making men labour to cheat themselves.

The onely case which in action admitts of nice scrupule is that of duty, in which men, especially those in stations of great importance, may be allowed a carefull sollicitude to prevent erring. For in civil and morrall cases, there is no paine but doubt; and this not onely on account of the duty, in which for conscience sake men ought to be strickt, but [also] for the consequences during the deliberation. Fals steps [in deliberation] look very litle, if not

⁵⁵ E.g., as recorded in Plutarch's lives. See North (tr.), *The Lives of the noble Grecians and Romans compared together by Plutarke*, the first edition of which is listed in RN Books (1). According to Whittemore, *Pure Lives*, p. 32, conduct was what Plutarch 'could and did measure'; and 'because he was dealing with the great and powerful, whose conduct affected the cultures in which they moved, his sallies into the genre of biography became, willy-nilly, sallies into history'.

contrarily inviting fair[;] but after they are made, they grow bigger [with the consequence that men] stare and strutt as if there were a sort of treachery in error, to faun and smile at first, but after the pass [is] made, then to bellow and roar. And some persons are allowed in more of this scrupulosity then others. Therefore churchmen and courtiers are ill joyned in buissness. The latter are for making all fly afore the designe; the other, as profest teachers, are more immediately oblidge to consider justice and decency. For this reason a *witty statesman⁵⁶ at a Coronation Councell, [—] in which a most reverend prelate[,]⁵⁷ in order to adjust to his satisfaction what lay in his province to performe[,] debated leisurely with more nicety then others [—] in hast[e] thought well of [the prelate]. After he was gone, [the statesman] grew very angry, and sayd[,] 'his name should be **sede vacante*'.⁵⁸

[f. 19]⁵⁹

3. The lowest order of men [the barbarous], if they may be stiled such[,] are people having no knowledg by any means superior to what are comon to brutes, that is, meer sensuall and self-

⁵⁶ I.e., George Savile (1633–95), marquis of Halifax (1682), who was lord privy seal from 1682 until dismissed in 1685. RN, *Life/FN*, p. 111, describes him as 'a person of incomparable witt'.

⁵⁷ I.e., William Sancroft (1617–93), archbishop of Canterbury (1678), who on 23 April 1685 crowned James II according to the ancient English service, although he was commanded to shorten the coronation rite and omit the communion; see Beddard, 'William Sancroft', and RN, *Life/FN*, pp. 125–6.

⁵⁸ For a hint concerning this hastily written historiette, see the final version of RN, *Life/FN*, pp. 125–6. In an earlier version of that life, RN provided more details; and these were incorporated by MN (2) in his bowlderised version—Appendix C: NORTH 1742 (p. 260)—as follows: 'At this Time, the solemn Coronation of the King and Queen was promulged [*sic*]; a Committee of Council to settle the Formulary, and a Court of Claims erected by Commission; in which his Lordship [FN], as Chief, gave the Rule. At the former, the Archbishop of *Canterbury* and his Lordship had some Difference. The Archbishop, as the Council thought, spun too fine; for that was his Way; and he would not abate one Scruple of what he thought his Duty; which made them think he trifled; and my Lord *Hallifax* said his Name should be *Sede Vacante*. However, all ended smooth and well.'

⁵⁹ Folios 19–21v are a revision of (UK:Lbl) Add MS 32529: ff. 21v–23, which, unfortunately, is of little assistance in filling in the damaged portions *infra* ff. 20–21v.

experience. There are few places in the knowne world [that] have [any] of these, except the American and Polar regions.⁶⁰ And by them, it is manifest, that this want of traditionall knowledg makes men beasts, which instilled by education, would have made them fall into order and live and act like men.⁶¹ The capitall or cardinall notion that is so wanting in them is that of truth and justice, and their vertues. They have religion, as their idolatry shews, (for what man is without fear, that is, a sence of his weakness, and consequently of better and more potent beings then himself, and that demonstrates both the existence and universall notion of a deity). But they are ready to be Christian, Turk,⁶² or what els you will have them, becaus they know no vertue in the terms true and fals. They are such indifferent metaphisitions to allow what you say to be true in your world, but not there. So it is in cases of right and wrong, [for] it is impossible to convince them it is not good to take from another, what they have occasion for. Say to them, 'would you have another doe so to you?' they answer [f. 19v] as children, 'but I will not lett him'. They live deprived of all the benefits men have above beasts, without either laws and magistrates to secure their peace and property at home, or alliances for strength against invasions from abroad. All the order that is to be observed among them is that they live in houses with their children; and so doe bears and wolves. And at certein times they run abroad in companys[,] hudling along and without regiment, anniversarily, to kill and destroy their neighbours; and so doe the wolves, etc. Where there are some tokens of *humanity, as what wee call kings or governours, their territorys are but as good

⁶⁰ In Chapter 1, section 7, of his treatise on continuum mechanics, Hobbes pointed out that the benefits of philosophy were enjoyed 'by almost all the people of Europe, by most of those of Asia, and by some of Africa; but the Americans, and they that live near the Poles, do totally want them'. For a reprint of this Chapter, see Hobbes, *The Elements of Law*, pp. 185–93.

⁶¹ Cf. Montaigne, 'Of the Caniballes', *The Essayes*, pp. 92–9, especially, p. 94: 'It is a nation ... that hath no kinde of traffike, no knowledge of Letters, no intelligence of numbers, no name of magistrate, nor of politike superioritie.... The very words that import lying, falshood, treason, dissimulations, covetousnes, envie, detraction, and pardon, were never heard of amongst them.'

⁶² I.e., Muslim.

larg familys.⁶³ They want arts to abridg their labour and accomodate life, and philosophy to entertein the mind, but on the contrary are ever children in admiration.

All these infelicitys proceed from a totall defect of literature, of which they have no sort [of] influence, mediate or immediate, as the rest of the world, more or less, hath. The Tartars and Affricans have had the Romans amongst them, and dealt, by leagues and comerce, with them and other literate nations, and have books and wrighting, as well as laws amongst them, such as they are. Yet for want of Christian and morall [f. 20]⁶⁴ vertues, wee account [*them little more than*] savage; but compared with the [*Polar and American regions*] and some negro-recesses in Affrica, they are [*like civi*]lised nations. And tho some[,] from a totall [*want*] of all lettered practises, may be less civil, yet having some trade [*and*] influence of them, derived either from a [*djacent*] neighbours with whom they transact, or el[s *from*] ancient flourishing times and gouvernement long s[ince] sunk and lost, doe by their manner of living and a sort of [*amity*] shew the benefits even of that faint influ[ence.] But as to the meer savages, it is remarkable how impossible it is to make any thing sink in their minds that is notionall. And how vaine and illusory the pretended conversions of them are. Whereby it is most apparent that with them *civility and letters must enter at the cradle or not at all and that not suddenly, for the dullness of the parents will *traducally cleav to the children, for divers generations. But this weight lessening by time,⁶⁵ constant method and teaching children may by degrees bring them to the [*reading of*] books, or which is all one, be capable of [*experie*]nce of them by tradition, and so by socie[ty and education] come at length to be civilised.

⁶³ I.e., they are tribal, with chieftains, like the ancient Britons described in Tacitus, *On Britain*, p. 62.

⁶⁴ Folios 20–21v are badly damaged, and some ink has faded; see *supra* Introduction to the Edition and note to f. 19.

⁶⁵ MS has 'time, and'.

Some have as a strang[e] humour to maintaine that it were bett[er] [f. 20v] [*for the*⁶⁶ *savages*], if all the books in the world (the [*world*] excepted[,]) which exception by the way is nonsense and made more civilly then seriously) [*were*] annihilated, and no more suffered to grow up [*in*] their room.⁶⁷ I appeal to comon sence, whither from the moment of such reformation, a relaps [*t*]owards the state of the American Indians would not begin, and hopefully advance its effects; and the Bible it self soon follow the rest, by being first monopolised by a peculiar order, and then fall from the *letter to tradition, and at length be quite lost.⁶⁸ I grant ill use is made of all good institutions, as arts invented to save life may be also used to kill; and the use of learning and books, as even of religion it self, may be depraved by bad men to bad porposes. But it is wicked and foolish to deprive the good and indifferent, tho much the less party, in number, of such noble advantages, becaus an unruly multitude perverts the use of them.

Knowledge in the world is like light; and the tradition of it, like reflection. The lustre of the day finds [*pass*]age, by small and almost capillary crannys[, *into*] the utmost recesses of dungeons, and there serves the poor occasions of such as are confined, [*a*]nd can obtain no more.⁶⁹ So in the world, if in [f. 21] barbarous recesses, there may [*be found among?*] many men any g[uardians] of *civility and knowledg; as when they [*have some*] laws, tho awkward and

⁶⁶ MS has two catchwords on f. 20: one is 'for', the other is illegible due to damage; and these probably were carried over to f. 20v.

⁶⁷ Perhaps a variant of Hobbes's thought experiment, where he feigned the world (but not man) annihilated, so that what remains are memories, i.e., past experiences. For RN's allusion to this thought experiment and its source, see Kassler, *The Beginnings of the Modern Philosophy of Music*, p. 186. Note, however, that Hobbes was not alone in imagining the world's annihilation.

⁶⁸ See *supra* Chapter 2 sect. 2.4. Cf. Dryden, as quoted in Hodgen, *Early Anthropology*, p. 262: 'Truly I am apt to think ... that the revealed religion, which was taught by Noah to all his sons, might continue for some ages in the whole of posterity. ...but when the progenies ... swarmed into colonies, and those colonies were subdivided into many others, in process of time their descendants lost, by little and little, the primitive and purer rites of divine worship.'

⁶⁹ Perhaps an allusion to the cave in Plato, *Republic*, 7.514a–518d.

mishapen; are not altoge[*ther*] in[*hos*]pitable, tho not very obliging to strangers; have authorised religion, and profess truth[fulness] and fidelity[,] tho very propens to treachery. I say all th[is] is the emanation of learning and knowledge, [*which*] hath bin propagated either from other neighbour nations, or [from] antecedent times, thro meandrous tracts traditionally, from unaccountable sources. One may from thence conclude, that learning and *policy hath bin there, whatever hath happened so to deforme it. And I know nothing that more argues an ancient comunication between America and the Ar[c]tick regions, then the economy of those vast monarchys[,] destroyed by the Spaniards, of Peru and Mexico. Nothing is more reasonable then to conclude, that the civilised parts of the world in all degrees mediately or immediately de[*rived*] all their advantages of security, profit and pleasure, from such knowledg, which[,] as light with more or less [f. 21v] [*vigor*,⁷⁰ *came*] to be diffused amongst them, and [*origi*]nally derived from the exaltation of criti[*cal*] learning.

f. 22]⁷¹

4. Of language, and its inc[*idents*]⁷²

But now to make bolder stepps, and ac[*cordingly*] discours neerer to practise, and shew from the [*nature*] of things, as well as from our interest and con[*veni*]ence by them, how much of substantiall knowledg and useful arts are really gained and propagated in the world, and also how much th[*e*] applycation of them is both facilitated, and made neat and polite, by our extended etimology. I shall first take a flight over the multifarious particulars concerned, and finally light and dwell more expressly declared upon two

⁷⁰ MS has 'vigor' as the catchword on f. 21, so that it probably was carried over to f. 21v.

⁷¹ Folios 22–23v are damaged, and some ink has faded; see *supra* Introduction to the Edition. These folios are a revision of (UK:Lbl) Add MS 32529: ff. 23–23v; see *infra* Appendix A.

⁷² (UK:Lbl) Add MS 32529: f. 23 has 'incidents'.

eminent topicks of cheif importance in our nation, the common law and history.⁷³

1. Wee are to observe that in what age or nation soever arts and sciences are invented, transplanted or revived, there goeth along with them a peculiar languag[e] appropriated to their pratique, such as wee mean when wee say, termes of art. It is but a compendium of the ordinary speech, as proffessors shall pr[o]pensity use, for easy and expedite expression of their buissness, in teaching, ordering, [o]r debating concerning it. And this language [f. 22v] [ordinarily]⁷⁴ is e]ither the vernacular speech of [a particular pla]ce and time, nor much varied from it. But [partly b]y that and partly, tho in less proportion of [words] coyned or translated for the nonce, scools and shopps are well acquainted with this manufactory. But forreiners to the buissness account it but jargon, and despise it as pedantick and vainely affected. But whoever enters into dealing in such matters, after a litle experience, shall find the use, or rather necessity of it, and immediately imbrace it.

[2.] It follows then that all arts and sciences, coming to be wrote for instruction of others, must be so done in their proper termes, which makes it necessary for those who would learne, first to make themselves masters both of the ordinary and [the] peculiar language in which they are envelopped. This falls out to be the case of the *post-nate generations, or foreiners, who must gather from languages of former [a]ges now out of all use, or such as have not bin bredd [w]here they are used, or some way got acquainted with them. And in this preparatory study, they must [f. 23] either be crittiques or etimolo[gists], [or be] like to such if ever they hope to attain a com[mand of] the languages. And in this cours, wee mu[st a]gain consider the hinted distinction of speech ordinary and

⁷³ Having completed his defence of learning (ff. 5–21v), RN's turns to the 'multifarious particulars': first, language and its modes (i.e., common etymology ff. 22–67); next, legal language and its modes, which includes the 'two eminent topicks of cheif importance in our nation'.

⁷⁴ MS has the catchword 'ordinarily' at f. 22, which probably was carried over at f. 22v.

peculiar.⁷⁵ The former is the buissness of comon interpretation, in which the usuall helps are comon grammers and dictionaryes, compiled by those who have taken the paines of observing the analogys and use of words; but this doth not immediately concerne the art here recommended. It is the peculiar, as termes of art, assumed words, proverbiall speeches, and the like, which is properly the sphear of an *etimologizer, to render and make plaine. And of these, the disquisition is very nice, as whither they are simple and originall, derived or compound; what the radicalls import; and how farr the deriva[tion] and compounds, vulgar use hath distorted;⁷⁶ and from what means and occasion all these happen. It is hard to say what industry, sagacity, and assistances are competent in this study. It is certein all histor[y,] inscriptions, medalls, diplomas, and laws a[re either] to be had or found, both in the language *inquisite[d] [f. 23v] [and⁷⁷ in] most if not all others also, [which] are profitably con[tribut]ing to the end, and fitt to be consulted by such as [de]sire to attein knowledg so clearly as may be to their satisfaction.

Wee have caus to lament the disadvantage of these ages, in which men, that will come at any just knowledg of ancient learning, must in the first place break thro a strong barriere of classik tongues, which the Ancients themselves were not charged with[,] such being their mother speech. And what is wors is, that this load is imposed upon youth, which is *cart-blanch, and ought to be suplyed with memorialls of things reall and usefull, and not formes of caracters and sounds, for such take up room upon the blank [paper], and as in possession exclude their betters, where-by the substance of things are not so well and readily admitted. Besides the trouble of this process is so *fastidious to youth, that it averts many brisk capacityes from engaging in the voyage of books, that perhaps being invited by the smooth entrance by their native language, would goe as farr [as to b]e done.

⁷⁵ See *supra* f. 22v.

⁷⁶ MS has 'distorted aside'. I have omitted 'aside' and left 'distorted' (misrepresented).

⁷⁷ MS has the catchword 'and' at f. 23, which probably was carried over at f. 23v.

There is none, even the most assiduous students[,] but groan under this load of [f. 24] languages, and greiv to loos their time, necessarily to resolve dark passages, which perhaps after all are like a rotten nutt, not worth cracking. The Ancients[,] from whome wee derive arts and philosophy, had immediate access to the matter without drudging in gramar and lexicons, and would be adept before wee gaine the termes. Wee doe not find that they *'ere the more neglected their language, but the contrary, imployed their paines and time in cultivating, *contracting and polishing it, as wee [now employ] much more [pains and time] to gaine an imperfect insight into theirs. But this was in the last place[,] adding it as a *corone to their philosophy, to make it look great and inviting. Wee study their language to learne; they, when masters, improved their language more effectually to teach, what they knew.

Now if a youth can translate or compose Latine and Greek, without other collected learning[,] he passeth muster as if he were learned enough. I know well that together with languages, arts may also be acquired; but it is rare, and wee doe not find many of our teaching methods look [f. 24v] that way. That which most recomends it is the noble French logick, called *L'art de pence*,⁷⁸ and encourageth it by example, using for instances of **eclarissement*, the cardinall theories of moderne philosophy. And if the choice of books be good, and the exercise much in translating, the benefit is double. But the comon methods are **toto celo* different. For to purchas language[,] youths are thrust into the dark grottos of the poets, and as to all knowledg, are wors then *purblind. Nay, this vanity is so egregious, [that] they take into scools all the figurate expressions and termes, not onely of the poets, but of gramer and the civil law, to retund the senses of raw youth.

⁷⁸ I.e., *La logique, ou l'art de penser contenant, outre les règles communes, plusieurs observations nouvelle propres à former le iugement* (Paris, 1662). Published anonymously and in numerous French editions, the author was Antoine Arnauld (1612–94), one of the 'Messieurs' of the Cistercian abbey at Port Royal des Champs. The first English translation was authorised by the Royal Society in 1674; subsequent English translations were published in 1685, 1693, 1702 and 1717.

What els means, *Que genus, & flexum variant heteroclito sunt*? and the rest of the caco-lillian-jargon,⁷⁹ which few[,] after all the whipping it in, understand in the whole cours of their lives. What strang[e] Afffrican monsters are in the front of the English [grammatical] rules, called the accidences; I mean the 8 parts of speech.⁸⁰ Why cannot noun be name; tens[e], time; mood, manner; verb, word; gerunds, things to be done; supines, submission or⁸¹ [f. 25] other English [terms], as masters may more acutely and to the porpos of understanding invent? I might goe thro all the gramatick art and pretend to make a rationale of it, if I had nothing els in my fancy to discharg. And [I might also] shew the insufferable tyranny of teaching,⁸² which is aggravated when wee say, it is not the thing, as most in shallow opinion fancy, but the means onely, a meer unprofitable shell. And were not the kernell above all value, so much fatigue to come at it were unreasonable, as when men say, 'the play is scarce worth the candle'.⁸³

Since it is then, that all the learning of the Ancients[,] and particularly the foundation of those sciences wee call liberall, comes to us thro the language of the ancient Greeks, who were the compilers and in great part the inventers, but most certainly the first penners of them, it is most necessary to take them in that dress they

⁷⁹ I.e., the bad jargon in the Latin grammar of William Lily (1486?–1523), which contains the sentence, '*Que genus ... sunt*', in a section treating heteroclite words, i.e., words which deviate from ordinary forms of inflection in words of a like kind. According to Michael, *English Grammatical Categories*, pp. 22 and 542, Lily's was the only Latin grammar developed during the seventeenth century, but its bibliography is complicated by its mixed authorship, uncertain origin and varying title. In his youth FN prepared an index of neuter verbs for one of the editions, perhaps the 1667 edition listed in RN Books (1); see RN, *Life/FN*, pp. 11, 477.

⁸⁰ See Michael, *English Grammatical Categories*, p. 108, regarding the category 'accident', which was then 'a blanket term' to cover all those features of words which had not been used in determining the parts of speech.

⁸¹ MS does not pick up the catchword at f. 25.

⁸² For the realisation of both aims, see RN, *The Muscull Grammarian 1728*.

⁸³ *the play is scarce worth the candle*: see Montaigne, 'Of Presumption', *The Essayes*, pp. 324–39, p. 331, who may be indebted to Horace, 'On the Art of Poetry', p. 89 ('the game's not worth the candle').

sent 'em forth in, or at least continue to use their termes, which, (as in all arts was observed,⁸⁴) will be found most proper if not absolutely necessary to a just notion of them.

[f. 25v]

The Arabbs or Saracens were the first that revived learning, after it was stunned by the light of Christianity, which in its primitive purity was autarches,⁸⁵ and had miracles for arguments. Those thought to transfer the arts from the Greek into Arab, but made foul work of it. However, the originalls lay asleep many years, and the curious knew litle of them, but thro these Arab translations. And at length, the originalls being brought into the light, those more then semibarbarous versions sank; and litle signe of their domination remaines but a few termes in astronomy, as zenith, nadir, azimuth, and almicantara [i.e., almacantar]; and in medecin, as jeulepp, sirrop, alkaly, and the like. But to shew the power of termes of art, when once introduced, and how hard it is to lay them aside and substitute others, I observe these to be in use at this day, and notwithstanding wee have the very Greek originalls of the mathematick and medicinall sciences, will continue so for ever.

But moreover wee having our humanity learning, as ethicks, history, and [f. 26] philology as well as the sciences and philosophy from the Greek[s], the language of all Europe respecting learning is really and truely Greek, onely a litle turned at the point, to make it flow, as their owne, which cannot be without some analogy of termination.⁸⁶ And profest translations use this method in reading termes of art, as not being translatable; for how can a man find words for things, new to the language? It would be a most vain expence of words to express them by periphrasis; as the Irish man that had no

⁸⁴ See *supra* ff. 22–23.

⁸⁵ I.e., autarchy (from Gk. *autarchia*), perhaps a term of personal significance, for according to RN, *Life/FN*, p. 27, one of his sisters, Mary North, 'a lady of great witt and politeness, and incomparable memory', had formed a correspondence club with 'divers of the lady witts' and devised its emblem: 'a gold sun with rays touching an azure circle, on which was wrote Autarchees, in Greek characters, which signified self sufficient'.

⁸⁶ For an example, see *infra* f. 27.

words for whipt cream, called it a huge great nothing. And if a translator would be so curteous to his reader, as to gratifie his ignorance, in explaining ordinary termes of art, it were best done by a vocabulary apart, then to incumber his text with fulsom circumlocutions.⁸⁷

This motly stile [of introducing foreign idioms into English] wee find in most authors that write of the sciences. To novices [it] seems pedantique and obscure, and as if they [the authors] affected hard words. And they are novices indeed that are of that opinion. For small skill will teach 'em, how vaine it is to medle with sciences without being prepared with a knowledge of the proper dialect of them. But [f. 26v] wee are not in such bad condition in our days[,] for the promiscuous teaching, and use of the arts hath made the comon termes of them reall English, that is, ordinarily knowne to signifie, what is designed to be couched in them, which is the benefit the language hath by generall scollarship.

For this promiscuous use of forrein words is not a chang[e], but an enriching of our language, and ought freely to be done, when reason requires it. As when it happens that our owne ordinary speech hath some very hard sounding words, that savour too much of the **barbare*, it is farr from blame, to comute them for others well chosen and apposite, out of any neighbour language. Much more when wee have no words att all to fitt our porpose, to take those that are knowne to bear the sence wee would express, either from the antique or forreine tongues. And so inlarge the confines of our speech, rather then[,] as some morose people dream[,]⁸⁸ betray it, as a nationall interest to forreiners.

Now admitting that these ordinary assumed words and phrases are by comon practis, become English, and the use of them [f. 27] also determined and knowne, it must no less be admitted that since they have root in other languages[,] wee have neither so full a notion of their signification, nor make so just and appropriate use of them, as if wee knew well the idioms they are drawne from. Besides much

⁸⁷ I.e., as in the 'Vocabulary' that concludes RN, *The Gentleman Accomptant*; see *infra* Appendix B: [NORTH] 1714.

⁸⁸ I.e., the language purists.

is due to the neatness and politess of language which depends very much on propriety. As for instance, some use Greek words with Latine terminations, as *phenomenum* for *phainomenon*, and the like[,] as are passing to be observed in the wrightings of the incurious. Then that comon word philosophy is taken in a wrong sence, that is, wisdom or knowledg it self, whereas it means onely love or profession of it, a style the ancient Sages⁸⁹ chose rather then that of Sofists,⁹⁰ which sounded arrogant, and was assumed by a sort of captious disputers of elder times. Whence sofist and sofisme (for a falacy) became tokens of dislike.

The word orthograpy is as comon as any, being a Greek [f. 27v] compound of two, viz., true and wrighting, and together, true wrighting. And yet wee are apt to redouble the epithete and say[,] true or fals orthograpy, which is tautologous or improper. And wee should goe no farther then to say, it is, or it is not, orthograpy, leaving out true and fals, which onely ignorance of the etimology occasions to be so vainely added. It is not an answer to say that the word may be [a] compound in Greek, but upon being adopted [as] English, it becomes a simple, and means the art of well wrighting, as the word, square, which is a *just 4th, if a compass [is] taken at the center, may be said to be true or fals without any absurdity. Altho this *serves the turne, (as I doe not deny,) yet⁹¹ it is much better to conserve propriety. For by letting speech loos to follow the *anomala that grow out of ignorant and vulgar use, living languages change too fast, and soon become little better then lost, so that in an age or two a man must goe to an antiquary to interpret his grandfather's last will and testament.

⁸⁹ The Sages (*fl.* 6th century BCE), whose wisdom was gnomic-epigrammatical, not systematic, were mostly statesmen. There seem to have been seven, although ancient sources tend to differ as to names that should be included in the list; see Ferguson, *Utopias*, p. 41.

⁹⁰ The Sophists were teachers of rhetoric, who sought to impart universal culture, including conduct; but when the profession began to deteriorate, the word 'sophist' acquired a negative significance, as RN indicates.

⁹¹ MS has 'but'.

[f. 28]

So long as there is a standard of speech, as are the books, excellent in their kind, left us in the classick languages from which wee have continuall occassion to borrow, why should not its native idiom be preserved, rather then give the reins up to ignorance and oscitancy, that will carry it out of the clear air into obscurity. One is the buissness of the knowing and carefull, the other the fault of the ignorant and lazy. And I must needs doe so much justice to the writings of our times, especially those of our devines both controversiall and devotionall. Wherein wee may observe the purity of learned languages maintained in a neat and unaffected English style. By which it is manifest that in the use of ancient words, they both understood and had regard to their etimology, and therein shew no small excellence in making good English, with such mixtures as doe not darken the stile, nor confound the ordinary readers. Whence I conclude that nothing maintaines the native justice and beauty of language and holds [it] back from gross corruption and improprietys [f. 28v] then having a due regard, (as I observed [above] in our ecclesiasticall authors, whose works most take with the comon people,) of etimology.

This gives me occasion to reflect on the great use [that] would follow, if the classick tongues, that is, Greek and Latine, were more generally accepted and knowne among persons of the best quality, of both sexes[,] then ordinarily they are. (I doe not exclude the ladys, but allow them no small share in the consequences of comon discourse, which is so much their diversion.)⁹² Wee should not then observe such want of orthogرافy nor precipitate chang[e] of our language as happens. As who would not stare, when a lord tells him, he doth not like his phiz. It would take some time to guess he meant phisiognomy. And not to mention the just as well as multifarious knowledg which is wanted and would be propag[ated] by it, among persons of quality and fortune, it would extreamly improve wrighting as well as speaking, and in generall improve the English pronounciation and orthogرافy.

⁹² MS has the parenthetical thought inserted after the word 'sexes' and before the word 'then'.

How is it [f. 29] possible any persons should spell, that know not the radicall composition, but onely the incertain sound of words; or how [does] it happen, that words of the same sound are diversly wrote and of various signification, according to the original derivation. When one speaks or writes of a right sine, another may understand it, a true signe, if he be prejudiced with the Latine, which tells him that signes and tokens are not the same as sines and tangents. Therefore a late practise of wrighting after sound, without regard to derivations, is in many cases a pernicious mistake, becaus the very sence of words is declared by their spelling.⁹³ And however in speaking which is *lively, wee can order by subject, gesture, or manner [of expression], to denote the difference, yet in dead wrighting real confusion or obscurity might follow. Vpon this skill of languages, the whole art of spelling depends. And I thinck I need not much labour to shew the want of it in persons of advanced stations and trusts. It is surely, where ever it happens, a signe of a defection of the most comon and necessary scollarship, even such as scool boys are whipt for.

[f. 29v]

I doe not say all this to exclude wholly the liberty of spelling from sound, but in many cases where it is reasonable, allow and comend it. And that is where pronounciation hath bin formerly very aspirate, gutturall, or (to use one word for all) *Gothick. And [when] divers vowells and sillables, formerly used, have in latter times, for softness and smoothness of comon speech, bin amended and retrenched, it is fitt orthograpy should conforme. As [for example,] that comon word[,] although. I have knowne some considerable orators, of remote countrys, [who] allwais sound it althouff, which I suppose is of the elder time; but now generally wee sound it no otherwise then altho. Why then should wee in wrighting be incumbred with so many letters, as -ugh, to no porpose; so of tho and thro, for though and through. For here is but one plain sound, and no double sence possible to be affixt to it; then **frustra fit per plura qua fieri potest per paciora*.

⁹³ RN himself is often guilty of 'writing after sound', perhaps because he had a practised ear for music.

I thinck this may be sufficient to shew the advantage of comon etimology, even in the use of our mother tongue; but yet I shall crave leav to add somewhat farther touching the inriching of [f. 30] languages, by *indenizing both forrein and antique words and idioms.

[f. 30v]

5. The capacity of language, and the power of translating

Language, at best, is but a sorry means of discharging our thoughts, so as to imprint them in the minds of those that hear us, in full force and justly as wee ourselves conceiv them. – **Fari ut possit quæ sentiat*, was one of the jolly Horace's cheif beatitudes.⁹⁴ It is a task that to comon people is thought the most easy, and withall in truth is of that difficulty, as to surmount art and industry to compass; and persons that way eminently successfull owe their felicity to nature, that hath given them a qualification inimitable. I must owne that with plain thincking persons, as country men and others of low education, expression is easier, then with such as fly higher, as orators, poets, and filosofers. For the former have no thought that is not ready drest, and if I may be allow'd the expression, they thinck in words, and then no wonder if they speak readily. They are not troubled with abstracts⁹⁵ or passions, as the others deal most in[,] who⁹⁶ are often at great loss, and not seldome very unhappy in finding competent words and manner of expression. Nay, wee shall observe many persons well guifted in [f. 31] the art of expressing themselves, yet [they] nodd, point, gape, stamp, shrugg, and toss, and all in labour to transferr

⁹⁴ Horace [Horatius Flaccus, Q.] (65–8 BCE), Roman poet and literary critic. In the sentences that follow, RN responds to his reading of Horace, 'On the Art of Poetry', pp. 86–7 (lines 222–248), concerning the difficulties of achieving a style that employs no unfamiliar diction; see *supra* Chapters 1 sect. 1.4 and 3 sect. 3.1. See also RN, 'Letters', pp. 254–5 (22 December 1706), for evidence that RN was reading, or perhaps re-reading Horace at the time he was writing this part of his text.

⁹⁵ I.e., abstract terms.

⁹⁶ MS has 'and'.

their *concepts without loosing, as they fear, in the delivery, striving to supply by action the weakness and imperfection of their words.

Among all those persons supposed to vnderstand well, who is he that could ever in speaking, however admired by such as hear, be exquisitely content with his manner of proceeding, and not thinck he might and ought to have done it much fuller and better? Those that understand most are hardest pleased, insomuch that the best witts are detained from excellent undertakings by diffidence of their power of expression. They are aware of a catalogue of failings, such as ambiguities, tautologys, disorders, impropriety, and confusions, that the more ignorant, and consequently confident doe not dream of. It is pleasant to read fair things, but it is very difficult to compose, without some sort of lameness or monstrosity. And the unhappiness of this work lys cheifly in this, that an habit of well doing is necessary to this, as it is to all other pratique excellencys, and that is not [f. 31v] to be acquired, but thro a pedantick exercise of doing (at first) ill. And wise men are *modest and timorous, and cannot boldly hold forth, as shallow people will doe. The latter[,] by that assurance which leads them to much use, and at length an habit, often attain extraordinary felicity of speech, and shine in assemblies, when their much superiors in *sence are not seen, and by that are yet more kept back from doing like them. I knew a courtier, an old *stager in buisness, who understood as well as any. While one of a contrary character was speaking in the Hous of Commons, [the courtier] came to a freind there, and sayd he would give all he was worth [so that] he could speak like that fool.⁹⁷

If this be the case in debating comon buisness as is done at councells and in assemblies, what are wee to expect, when the fruits of high flown fancy and the cream of the imagination are to be drest and sent up. As is done ordinarily by poets and orators, when they goe from the truth and reality of things, which are apt enough to lead,

⁹⁷ DN (3) fits the description of the courtier for two reasons: (1) by the age of thirty he was the most substantial of the English merchants in the Levant (he returned to England in 1680); and (2) he entered parliament as member for Banbury in 1685, the same year RN entered parliament for Dunwich. It is likely, therefore, that the 'freind' in the House of Commons was RN himself.

and suggest words, and serve themselves of fictions and chimeras, suited not to any reality or substance but to the *talent or prejudice of the auditory [f. 32] and so excite in them all manner of passio[n], affection or aversion, and thereby dispose them to thinck they have consulted well, to be most wonderfully informed, and at length resolve without, nay, often against comon sence and reason. What a task is this for poor weak words to perform? And yet what with borrowing, translating, compounding, configuring, and such like management and choice of words[,] they order the matter so as to work (almost) miracles, and shall represent things subsisting, done or feared more touching then any picture or other possible representation can doe.

Now the more copious a language is, and repleat with variety of translated words and phrases, the richer is the treasury of those, that deal in words. Wherewith they can make voyages of fancy, and compass regions of invention, which others of more *contracted speech would faint in; like creatures that are astmattick, and for want of breath in the journey, labour for life, and at last come short home. Nothing shews more the necessity of inlarging our language upon the confines of our neighbours, then the difficulty, if not impossibility of translating tollerably without using [f. 32v] much familiarity of that sort; so that as the affinity of languages is more or less, so it is more or less practicable from the one to the other. And accordingly the European languages, which by originall derivation, and the promiscuous use of the classick books, have so much of Greek and Latin comon to them, that most subjects pass tollerably well, from one to the other. But with all that advantage, translating well is a very stubborn work, and however easy it is thought, and inviting to bookish persons, few that undertake it can satisfie themselves in rendring peculiar passages, that have any thing happy in the *turne of them.⁹⁸ The thought often cleaves to the words, and no linguist is

⁹⁸ These and the following comments seem to draw on RN's experiences as a translator; see *infra* f. 48 and Appendix B: [NORTH (tr.)] 1701.

chymist enough to draw over the lepor⁹⁹ and elegance of it. They may take occasion to give us as good, but not the same, and in that present originalls instead of translation; as I repute all those which have, as some of the moderne French, a *repute of being as good and sublime as the originalls themselves. And particularly those [translations] of Ablancourt of some dialogues out of Lucian.¹⁰⁰ The libertys there taken [f. 33] of altering, transposing, omitting, and adding, to bring the Greek witt to a French *goust, is not properly translating, but composing. He takes the originall, as men doe raw silk, or the hair of goats, which is no where so glorious as when the beast wears it; and [he] sorts, combs, and spinns it, and then makes fine gay things to pleas his countrymen.

I say not this to blame the proceeding, for I doe really approve and admire it, as the onely tollerable way to give one age the benefit of the witt of another, without the fatigue of gaining the language; but [I say this] as a demonstrative proof, that it is the greatest advantage that can be to a language, to receive from others all idioms they want. And this comprehends not onely languages but [also] professions and arts, which I observed¹⁰¹ have a peculiar dialect, they call their termes, which are ever well to be entertained in generall speech. For as many nations have comon examples of words, the meaning of which in others is inexpressable but by perifrases, so arts give short termes to express much. And those serve to *contract and invigorate a speech, [f. 33v] as well as [to] enliven it with plenty of figurate and allusive words, which fill the sence, and render it comprehensive.

⁹⁹ Perhaps a slip of the pen for lepidity, i.e., wit or delectableness in speech; hence, just as the chemist distils alkaloids from an oily base called 'lepidine', so the linguist distils the products of speech from thought.

¹⁰⁰ Lucian [L. Lucianus of Samosata] (CE c.120–200) Greek moralist, whose dialogues and other writings were translated into French by Nicolas Perrot d'Ablancourt (1606–64). The translation, which went through a number of editions between 1654 and 1709, included Lucian's story of an interplanetary visit, perhaps one of RN's 'voyages of fancy', *supra* f. 32.

¹⁰¹ See *supra* ff. 22v–23.

One might give many instances of this, but I shall mention onely one or two. Hare'd [i.e., hared] in English hath a signification, which is not answered by any other language. *Egare* [i.e., *égarer*] in French is neerest, but not the same. That [French term] signifies lost or wildred which may be with spirits composed enough; the other signifies lost or wildered[,] not from being out of knowledg [but] by the means onely of a confusion upon the spirits, which doth not permitt so much consideration as to know a plaine way. Neither ordinary English, French, Latin nor Greek have any word that signifies mechanicall power, as that of a lever, etc., which may be used current in speech with the epethites of its quantity. But the English manners have assumed a word which is most proper and vernacular amongst them for it, and that is purchas. And in all their management and discours shall order the affair so as to be understood for getting the greatest purchas or advantage of force that may be. Much more of this, and other benefits comon English hath drawne from the marine,¹⁰² as I may note elsewhere.¹⁰³

[f. 34]

But I must be positive that translations[,] with all their faults, are very good and usefull, in many respects, and not a litle, on this account, that they will introduce by degrees divers idioms, supplementary of defects in languages, from others that in those items are elegant and significant. As from the French, the compound word **Je ne scay quoi* is become English, as apt for a porpose our speech wants to express. Custome indeed might stamp, A whatshalcallum or an I-know-not-what in such case, but it hath not done it; and such words would in smooth English be improper, and rather burlesque (which is another [French] word wee comonly assume) then just idiom of speech. Instances of this sort are obvious as well as numerous. Therefore I use no more, but declare such improvements, to be owing for the most part to translations. The rather becaus [first] it is neither easy nor fitt to translate exquisitely

¹⁰² I.e., nautical terms, exemplified here by the term 'purchase'—to haul or draw in, specifically by a mechanical power as by wheel-and-axle, pulley or lever.

¹⁰³ Missing in this text; but see (UK:Lbl) Add MSS 32529: ff. 212–213 and 32530: ff. 118v, 119v, 129v, 130v.

out of one language into another. For one cannot step to and fro, as must be done in such work from one to another, without carrying over a tincture of the first. A stile will forme it self much upon idioms of that out of which wee translate in spight of our teeth.¹⁰⁴ And next if it could be otherwise performed[,] it is better not to doe it, becaus carrying over idioms, termes, and somewhat of style, gives a better idea of an [f. 34v] author, and more fully then if they were all waived and the pure receiving-language substituted.

I grant a translation must be plaine and intelligible[,] being done for the use of those that doe not understand the originall, but yet it is not necessary nor expedient that the just idea of the latter is to be lost. The true measure of a translator is to infuse all he can of the same ideas as would be had out of the originall, if it were understood; and that is best maintained by conserving all the singularitys, onely bringing them under fitting interpretation.¹⁰⁵ The jolly knight that translated Boyleau's *Art poetique*,¹⁰⁶ made it his buisness to *inquire out bad poets of former times [in order] to use their names, in the room of those his author censured. This was first impossible to adjust, and next untrue, and not tollerable in a translation.¹⁰⁷ So a late author out of French, renders *au palais*, at

¹⁰⁴ *in spight of our teeth*, i.e., in opposition to our settled purpose or resolution; see, e.g., John Skelton, *Colyn Cloute*, line 939.

¹⁰⁵ Cf. North (tr.), *The Lives of the noble Grecians and Romans*, [sig. *7r]: 'the office of a fit translator, consisteth not onely in the faithfull expressing of his authors meaning, but also in a certain resembling and shadowing out of the forme of his style and the maner of his speaking'.

¹⁰⁶ I.e., *L'Art poetique* (1674). Written by Nicolas Boileau-Despréaux (1636–1711), it appeared in English dress, revised by Dryden, as *The art of poetry* (2 vols., London, 1683). The translator, William Soame [Soames] (c.1645–86), kt. (1685), was FN's brother-in-law; see RN, *Life/FN*, pp. 128, 155, 164, 210, and RN, *Notes of Me*, p. 236. For an amusing historiette concerning RN and this 'jolly knight', see ff. 104–105, 'An experiment of the liquid phosforus, not to be comunicated for the danger, of using it in the burning of sta[c]ks, houses, etc.' (date uncertain), one of the memoranda in RN's notebook (UK:Lbl) Add MS 32549: ff. 103–121v.

¹⁰⁷ The translation was re-issued in 1708 with a note to the effect that it was Dryden and not the translator who decided to substitute English poets in the place of French ones; see Macdonald, *John Dryden*, pp. 36–7.

*Westminster Hall, [whereas at] the hall of justice had bin better. But Mr Hobbs,¹⁰⁸ without competition the best English translator, renders Ethiopia, in Homer[,] Blackamore-land, which comes closer to the idea of the author;¹⁰⁹ for the word with us is now pure geografick, but there [in Homer] signifies the land of black faces **in terminis terminantibus*. Some may thinck [f. 35] the other way, Ethiopia, the better; and it is more smooth and polite. But [it] looseth the genius of the poet, who it's probable invented the word, to make the recess of the deities more solemne, as visiting another species of humane kind. In short[,] translating is a work of infinite critiscisme, and therefore I shall at present deal no more with it.

The learning strang[e] languages is and ever will be a sour task, tho whipping be not **in the 'rere*. And surely nothing so much conduceth to make it a litle more easy, then etimologicall reflections. For those will carry us not from one language to another merely, then thro all both ancient and moderne. And an exercise in this sort of chase will soon make men tollerable proficient in all of them. For there is a connexion of languages, as there is of things; these depend on each other, and all on the common principles. And languages have some common fountaine whence all flowed, and are but as severall streams which frequently cross and intermix their waters. In these searches the farther a man goes, the smoother his way is. This is proved by a comon observation [f. 35v] among travellers, who say[,] when a man's tongue is once broke loos from his mother speech, and accomodated to any new language, he will be continually more apt to gaine others. And I am sure, reverting the observation, he will be thereby much more edyfied by an etimologicall skill in his owne [language]; and on all occasions of speech that will not be readily supplied at home, he will aptly take what he wants from his forrein store. And in these speculations [he will] be not a litle diverted with observing the affinity and **con-radicality* of the European tongues; as English, bishop, Spanish, *obispo*, and French, *evesque*

¹⁰⁸ I.e., Thomas Hobbes (1588–1679).

¹⁰⁹ I.e., the supposed author of the epic poems, *Iliad* and *Odyssey*. For Hobbes's translations, see Macdonald and Hargreaves, *Thomas Hobbes: A Bibliography*, pp. 58–62.

[i.e., *éveque*], etc.[,] all from the Greek, *episcopos*. So goal [i.e., gaol], in English, but pronounc't jail, and why? becaus it is the same *Gothick word as *jaula*, in Spanish,¹¹⁰ which signifies a balustred prison, such as wee have in market townes, called a cage; and thence with us comes to signifie any comon or publick prison, as the ordinary comissions **ad goalam deliberandum*¹¹¹ shews. It is impossible to read a forrein author without reflections of this kind, which are no less usefull, in adjusting our owne dialect, then pleasing, as meeting with frequent hints of the origination and marches of it.

[f. 36]

6. Of termes of art, style and idioms

Taking it then for granted, first that the *fastidious difficulty of acquiring an easy intelligence of new languages, and the insuperable task of translating justly, makes it expedient to take into our owne, the litterate words and modes of expression, found ordinarily in the best books, without aiming at altering or mending them. And next that all learning, be it scientifick or pracktick, cannot subsist without such, either borrowed or invented. I add a third remarque, which is that it is almost indifferent with regard to use, what those termes or expressions are, provided they are knowne to have bin used to such and such porposes. And if any elegance, brevity, or other comendable property be predicated of some to preferr them to others, that one single qualification of having bin once in use, getts the better of all others. And that is the case of our comon learned languages, the books whereof are *fretted with the hands of almost every

¹¹⁰ According to OED, the Modern English term, jail, comes from Middle English (c.1150–c.1500), which had two types: one, *gaiola*, from Northern or Norman French, the other, *jaiole*, from Central or Parisian French. These came down to the seventeenth century as *gaile* and remained afterwards 'as a written form in the archaic spelling *gaol* (chiefly due to statutory and official tradition)'. But from the sixteenth to the eighteenth centuries, it is 'difficult to say' whether the form *goal* or *goale* was 'merely an erroneous spelling of *gaol*, after this had itself become an archaism, or was phonetic'.

¹¹¹ For the commissions, see *infra* f. 110v.

studious person; and thereby they are no strangers to their termes and idioms.

Therefore it is gross imposition to pretend discoursing of such [f. 36v] matters as they treat under any other termes, then such as they use. For that is to obtrude a new language to be learnt in the room of an old one already knowne. And one may justly say, why doth this fellow trouble us with his newfangled words, whose sence is not exactly defined, when wee have a sufficient stock of the old ones, that every one understands; is it so easy to bear in mind, new names and termes? Such as teach children may enter them in what idioms they pleas, being white paper, and *indifferent to all, and it would *serve the turne in the confines of the schoole. But abroad all novelty of speech is but affected gibberish, such as men may talk with designe not to be understood. Language is but an instrumentall conveyance of things from one man's mind to another; and that surely is the best tool that most readily and effectually doth the work.

It is now a generall institution of youth, to be acquainted with the classick tongues, which gives them a prepossession of language as to all arts and philosophy conveyed by them; and this paines will not be lost, **conclamatum est* as to all pretensions to innovation upon them. Therefore it happens that these tongues are become quasi an universall as well as [a] philosophick language, which tho not a compleat one, yet being most [f. 37] early and generally acquired, *serves the turne, and as to all philosophick and artfull termes, will hold out against all that the witt of man shall introduce to dispossess them.

There have bin some¹¹² so fond of their native idiom[,] and particularly among us of the Anglo-Saxon dialect, as to indure nothing that varys from it. And they (for example) pretend that the ordinary English is competent for all manner of expression without the aid of any exotick words. And accordingly would have that a standard to rule all by; and if occasions extraordinary happen, to use uncomon words, they must not be taken from forrein languages, but coyned with analogy to our owne. As to this opinion, I desire to

¹¹² I.e., the language purists; see *infra* ff. 40v–41.

distinguish: 1.¹¹³ If it be understood in opposition onely to vain affectation of using borrowed or out-of-the-way words [—] a vice much reigning among a new order of scollars and artists, who doe it not for necessity or advantage but for ostentation and levity, and while they might have as good, if not better out of the ordinary English [—] I say[,] in this sence, I wholly subscribe. For nothing is more frivolous then a needless extravagance in action, dress, and speech.

As to the lat[t]er [i.e., vain affectation], Dr. Browne¹¹⁴ is an eminent instance, for he was a man judicious and learned, but was [f. 37v] so farr gone with the pedantry of his profession, as he could not write of comon things but in Latin and Greek. Wittness, stirrop, which he calls a suppedaneous stability. The former is a proper name, and short; the other is wee know not what, and hath double the letters, an error wors then labour in vaine becaus it is to bad porpose, and sets up indefinites¹¹⁵ in the roome of certein and appropriate termes. The commutation in this instance is so faulty, that it is a revers of the maine and onely rule of borrowing in language, which is to supply one that wants, out of another that abounds. For this [term of Browne] quitts a name proper in the language in which he writes, for a circumlocution out of a language that hath no proper name. And to say truth, the Romans had not stirrop, name nor thing; therefore the familiarity with their language in this particular was by chance, but very unlucky. Whoever will observe a world more of this vanity may peruse the *Vulgar Errors*.¹¹⁶

¹¹³ MS has no further enumeration; but see *infra* f. 39.

¹¹⁴ Thomas Browne (1605–82), M.D. (Leyden 1633, incorporated at Oxford 1637) settled in Norwich. He was knighted in 1671.

¹¹⁵ I.e., abstract terms.

¹¹⁶ I.e., *Pseudodoxia Epidemica: or Enquiries into Very Many Received Tenets, and Commonly Presumed Truths, which Examined Prove but Vulgar and Common Errors* (London, 1646). Five other editions followed to 1672, each revised or augmented; and the work was also reprinted from the corrected and enlarged seventh edition as 'Enquiries into Vulgar and Common Errors' in vol. 1 of *The Works* (London, 1686).

I cannot excuse our naturallists, who make their conceptions less esteemed by an overfamiliarity with Latine commixt in their English. I doe allow it will pass better in such subjects, then in others more vulgar, becaus few medle with them that are not *compotes of the Latin it self, and perhaps the Greek[,] and had rather read things so wrote then otherwise [f. 38] becaus the words generally have the place of termes of art: such as phænomenon, stagnum, automaton, vis impressa, and the like; as also the astronomers[,] whose language can scarce be English, for what can be made in English of executrick [i.e., eccentric],¹¹⁷ parallax, anomaly, and the like. But these men often overdoe, as wee may find in divers *tractatuli, in the [Royal Society's] *Philosoficall Transactions*.

Wee are not so nicely sensible of any thing as in the way of ordinary speech, [where] the least scruple beside the comon track is discerned. And there is no medium between a necessity, or a very considerable advantage by it, and the being very stark, naught and impertinent. Whoever speaks or writes should have no aim, but to produce that which is worthy, and to be clearly understood, and all with as litle delay or trouble as is possible. There is no respect shew'd in sending one back a sentence or two, while the style moves forewards, to recollect what the person should mean or drive at. The language should move soft and easy as westerne air, without occasion of suspence from obscurity, or diversion from the matter, by any novelty in the style; but in limpid and connate periods and expressions, which shall neither *flirt nor *start, nor make any rude or strang[e] sounds. The best of dress is that which gives no occasion of notice, either from [f. 38v] nicety or negligence of the person, so that language which engages most attention to the matter and least to the words is the best.

This is proved by the practise of many grandees in the world, to whom all language is so *fastidious that they choos to comand and take messages by signes, and for that end have men bred mutes.¹¹⁸

¹¹⁷ Perhaps a lawyer's slip of the pen.

¹¹⁸ According to Paul Rycaut, *The Present State of the Ottoman Empire* (London, 1668), pp. 34–5, mutes in Turkey were not bred but were 'men naturally born deaf, and so consequently ... dumb'; but they learned to communicate through sign

And whatever our custome here is to babble, it is the ordinary practis of most forrein nations to affirme, deny, and express many passions and sentiments, even in comon conversation, by meer signes.¹¹⁹ Action is more prompt then speech, I might say prior in nature. For creatures understand one and other, and first of all mankind, by their actions, rather then [their] sounds; and it is less *obnoxious to error to doe, then to say. Wee have less reason in ourselves to trust our words then [our] actions, [because] the former are easily hit *out of joynt, and seldome faile of being too long or too short.

I am sure in the judgment of humane dealings, one graine of action is more significant of the truth of men's intentions, then speeches and harrangues of greatest prolixity. I doe not mean here any thing in the sphear of poetry, which is a profest tricking with words. As in prose the sence and argument are the principall aim and the wording but instrumentall, so in poetry, fable and jingling are the cheif buissness, [f. 39] and the morality as it happens. That may follow, a litle more or less, or of this or that sort, but fancy and fiction rule the roast.¹²⁰ – **Vtile, dulci* – is a pompous character, and the latter member of it hath sufficient force comonly applyed to advance it; but as for the other [member], much might be done if the poets had it in them. I allow poetry, as well as bear-baiting, may be used as a property to *serve turnes, and it is very well when either of them is for good. And the plainest language also is not seldome depraved to all manner of abuse. For there is very good gramar in lys, as well as in truth. But these are not matters I yet intend to medle

language that became fashionable 'in the *Ottoman Court*' and was used by those who attended the 'Grand Signior, before whom it is not reverent or seemly so much as to whisper'. Rycaut spent some years in the Levant before becoming a judge of the admiralty in Ireland (1685) and resident of Hamburg and the Hanse Towns (1689). According to DN (3), he was 'my very good friend'; see Grassby, *The English Gentleman in Trade*, p. 194.

¹¹⁹ Cf. Montaigne, 'An Apologie of Raymond Sebond', *The Essayes*, p. 227: 'there is no motion nor jesture that doth not speake, and speakes in a language very easie, and without any teaching to be understood: nay, which is more, it is a language common and publike to all: whereby it followeth (seeing the varieties and severall use it hath from others) that this must rather be deemed the proper and peculiar speech of humane nature'.

¹²⁰ *rule the roast*, i.e., are paramount: see Heywood, *The Proverbs*, p. 10.

with,¹²¹ and therefore proceed with the second *construction of the opinion stated.¹²²

If the tenacity of our native idioms be taken as exclusive of all liberty of using forrein and apt termes and phrases for expressing things, not expressible in our owne, I thinck I am sufficiently declared against it.¹²³ The vertue lys in the *discretion and conduct, as avoiding the necessity if it may be done, if not, using the liberty with good choice and propriety. And so the defect shall prove a reinforcement; and a sentence that must have bin dull and obtuse, shall come off brisk and [f. 39v] pointed. Tully himself,¹²⁴ as bold a translator as any, tho not so happy as some, boasted of making tollerable Latin out of good Greek. [Yet he] seldome ventured to translate a terme of art, but gave it as he found it; and if he substituted a Latin word[,] it was with apology, for having none more apt.

Subjects drawne or derived from the classick authors cannot be so well drest as in their native garb. As an Armenian merchant looks more graceful in his Asiatick habit, then if he were in a side-box dress,¹²⁵ for wee know him to be of that country. But if wee mett a knowne English man in such a *gallimaufry dress, half male and half female, he must retire to Bedlam¹²⁶ or be hooted for an ideot. If things are uncomon[,] the words, wee would express them by, cannot be familiar to the ear, but either they must be assumed or made. The

¹²¹ See also ff. 74–75v (unedited sect. 9), for RN's digression regarding 'men's characters and behaviour are a surer indication of their drift then their speeches'.

¹²² See *supra* f. 37.

¹²³ See *supra* f. 26v.

¹²⁴ I.e., Cicero [M. Tullius Cicero] (106–43 BCE), Roman statesman (orator) and philosopher, in whose works the Latin language is said to appear in its greatest purity. In transposing an entire literary genre from Greek into Latin, he 'paraphrased, selected, blended, and summed ... up, with his own distribution of emphasis'; see Grant (tr.), *Cicero on the Good Life*, p. 14.

¹²⁵ I.e., dressed in English attire appropriate for a side-box of a theatre.

¹²⁶ I.e., either the Hospital of St. Mary of Bethlehem in Bishopsgate, rebuilt in 1676 near London Wall, which was used as an asylum for the reception and cure of mentally deranged persons; or, by extension, any lunatic asylum.

latter is the wors, because the ear is so nice, as to bear any thing rather than an extravagant jangle of sounds it is [not] used to. Which happens, when men will affect the Saxon idioms upon extraordinary occasions, that is, compounding words to *serve turnes, which is a noble practis where custom allows it, but intollerable when it doth not. The puritanicall style in preaching and praying useth to abound in such figures[,] and [f. 40] to them wee referr for a world of barbarous examples.

The true reason why innovations of this sort will not be endured, and any thing taken from the classicks will not onely pass muster but [also] bear a sort of *repute is, that the former is knowne to few, but the latter to most, and especially profest scollars, to whom it is all familiar. I doe in no sort comend a pybald style, larded with scrapps. It is a pedantry I have enough spoke against.¹²⁷ But yet when the language[,] that is the vehicle of a man's thoughts, is too narrow to receiv them, it is lawfull to take another that will doe it. The orator last mentioned [Tully] is very apt to express himself in Greek, especially in his epistles,¹²⁸ which he wrote with a freedome that [epistolary] style demands, and could not often so well let goe a thought in his native Latine. But in this proceeding, it is to be considered to whom you direct. For if it be to such as know no more then their mother tongue, there is no going beyond it, on any account. Thus men err, that preaching in country churches cite Hebrew and Greek. But respecting the generality of men who are more or less addicted to books, and are courted under the title of Gentle Readers, wee may suppose them to be masters of so much scollarschip and language as to warrant a free use of the classicks on occasion, and the more polite European tongues to help out defects, if wee are so puzled in our owne.

¹²⁷ See *supra* ff. 16, 26, 39v. The piebald style, according to Butler, *Hudibras*, Pt. I, canto 1, line 96, is 'A Babylonish dialect,/ Which learned pedants much affect./ It was a parti-colour'd dress/ Of patch'd and piebald languages:/ 'Twas English cut on Greek and Latin,/ Like fustian heretofore on satin.'

¹²⁸ During the most important period of his life, Cicero maintained a correspondence with a wide circle of literary and political friends and connections. This correspondence is now commonly arranged under the titles, *Epistolæ ad Familiares*, *ad Diversos*, *ad Atticum* and *ad Quintum Fratrem*.

[f. 40v]

7. Some examples of vaine tampering with languages

That which confirmes me of the vanity of holding language close to any idiom or analogy [—] endeavoured [on the one side] by odd compositions of old words, and on the other side of leading forth a language, as some pretend, to improvement, after particular men's fancys, tho in truth all for the better [—] is, the miscarriage of severall experiments or attempts of that kind [which] happened in a few years among our selves. These I intend to present.

And the first is Mr. Farfax¹²⁹ who was a clergy man and provoked by Dr. Parker's¹³⁰ insolent style in his *Tentamina de deo*,¹³¹ and about [1674]¹³² publish't a book of filosofy and metaphysicks, which he calls *The Bulk and Selvedg of the World*,¹³³ by which he meant, of the magnitude and limits of the vnivers. Had he given us that, wee had not stumbled at the threshold. But it seems he was afraid of wrighting Latin, and chose rather to ridle, then betray his want of germaine English, to fill up a filosofick style. I durst challeng a dexterous enigmatist, without some study[,] to resolve me his title. The rest of his book is **eiusdem farinae*, for instead of the words used by all filosofick writers, which every one knows, like of and for, he conjures up a parcell of tremendous [f. 41] compound

¹²⁹ Nathaniel Fairfax (1637–90), M.A. (Corpus Christi, Cambridge 1661) and M.D. (Leyden 1670), was ejected from the perpetual curacy of Willisham (1662).

¹³⁰ Samuel Parker (1640–88), D.D. (Cambridge, *per literas regias*, 1671), was bishop of Oxford (1686) and president of Magdalen College, Oxford (1687).

¹³¹ I.e., *Tentamina physico-theologica de Deo: sive theologia scholastica ad normam novæ et reformatæ philosophiæ concinnata, et duobus libris comprehensa....* (London, 1665).

¹³² MS has a blank space here.

¹³³ I.e., *The Bulk and Selvidge of the World. Wherein the Greatness, Littleness and Lastingness of Bodies are freely handled, with an Answer to Tentamina de Deo* (London, 1674). Fairfax and Parker agreed on matters concerning 'pure' English, but they differed on matters concerning revealed and natural religion; see Croston, *Two Seventeenth-Century Prefaces*, pp. ix–x.

polysyllable Anglo-Saxonick termes and expressions as would, in this age, almost fright Satan himself.

His fundamentall opinion was, that pure English was copious, all-sufficient, and need not goe on borrowing; and this must be maintained in practis, as farr as invention would stretch, which was very farr out of the comon road of English. But sometimes his matter grew too hard for him, and he was forc't to comply with ordinary filosofick style, els his book had bin a prodigy, instead of a monster as it is. I cannot deny but some of his words, of the newest invention, are not ill contrived[,] being shorter, and in that better then the Greek, and as readily pronounc't[,] wanting nothing but custome, and being knowne, to preferr them. So that best and worst are exotick and intollerable. They suffer much also for being a kind [of] or somewhat like to English. A new species of animalls from the Indies is not so stupendious as some complex or defective [animals] of our owne. Our acquaintance with the elements makes us discern and hate the uncouth mixture of them. In fine[,] one would thinck he feared the Greeks[,] or rather the Romans, should come and by marks in our speech claime us for their owne; or to be as the jay in the fable,¹³⁴ with shame[,] stript of our stolen feathers. I shall exaggerate this no farther then by giving a specimen of a few [see *Figure 7*], by which the many others may be guessed at.

[f. 41v]

Methincks I hear some cry[,] 'Hold, here is enough to choak Bell and the dragon.'¹³⁵ I appeal to any one which of these two

¹³⁴ See Aesop, *The Complete Fables*, p. 119, Fable 162 'The Jackdaw and the Birds', in which a jackdaw adorned its body with the feathers of other birds so that Zeus would choose it for its beauty as king of the birds; but the ploy failed when the other birds 'stript' the jackdaw of the added feathers, revealing its true identity.

¹³⁵ I.e., Fairfax's slaying of the English language is like Daniel's two slayings in Babylon, the first of Bel, a false idol, and the second of a revered dragon, who was no idol. These slayings are recounted in the extended Book of Daniel xiv. 1–42, which Protestants considered apocryphal and, hence, to be excluded from the Bible. Nevertheless, the chapter was included in the original 1611 version of the King James Bible and listed in Article 6 of the Thirty-nine Articles of the Church of England; and this may account for the query in Selden, *Table Talk*, p. 8: 'Why should we leave it out?'

The vsuall.

Mr. Farfax.

Magnitude	Bulk
Limits	Selvedg
Space	Roomthyness
Aeriall	Airsome
Impenetrability	Vnthoroughfaresomeness
Arithmetick	Tellcraft
Spirit	Ghost
Fortuitous concors of } atomes }	Huggermugger of medlesome beings all jarrs
Devisible	Cleavsome
Mediocrity	Middlekin
Extension	Outstretchedness

*Some neologisms in Nathaniel Fairfax's
The Bulk and Selvidge of the World (1674)*
Figure 7

columnes is readiest understood, by meer English illiterate readers. Whither that from the Latin and Greek, which is ingrafted in our language, and in frequent use, or the other, of affected *Gothick compound, scarce ever heard of, or elsewhere to be found, either express or in similitude? It may easily be imagined how short lived such a peice as this proved; surely it is expired in wast[e] paper, for [f. 42] few of them were sold, and now not any [are] to be found.

I have 2 authors more to name, of another genius, worthy to be admired as well as remembred, being at the head of ingenuity in their times; and both applyed with great judgment and industry to the buisness of regulating and inventing for improvement of orthograpy and language. But they had wind and tide against them, that is, prejudice and prepossession from use and custome, which made their labours sink; and that not a litle precipitously from la[u]nching their modells all at once, in all the perfection they could give them. Whereas language will not mend, nor alter but by slow degrees, and not by force of reason and utility, but [by] authority,¹³⁶ and that not of the wise, but of the great and many. One of these [authors] was the late Mr. Butler¹³⁷ of Magdallen College in Cambridge; and the other Dr. Wilkins[,]¹³⁸ late Bishop of [Chester]¹³⁹ and a member of the Royal Society.

Mr. Butler compared the comon English pronounciation with the orthograpy, and found they did not correspond, and the wrighting was not so nice as the pronounciation, and that, as he thought, made a confusion. He took offence too at some letters which were mute or superfluous; and having compiled severall books, as of *Musick*, *Rhetorick*, *Bees*,¹⁴⁰ etc.[,] he had a [phonetic] caracter cast on

¹³⁶ I.e., by fashion (the usage of polite society); see *infra* f. 47v.

¹³⁷ Charles Butler (c.1560–1647), M.A. (1587), divine and schoolmaster.

¹³⁸ John Wilkins (1614–72), D.D. (Oxford 1649, incorporated at Cambridge 1659), bishop of Chester (1668), was one of the founders of the Royal Society.

¹³⁹ MS has a blank space here.

¹⁴⁰ I.e., *The Principles of Musik...* (London, 1636), *Rhetoricæ libri dvo...* (Oxford, 1598) and *The Feminine Monarchie or a Treatise concerning Bees...* (Oxford, 1609). See RN, *Notes of Me*, p. 155, who indicates that the first book was lent him by John Jenkins ‘with a comendation of it that it was the best in the kind. I studyed

porpose, in which they were publish't, the nature of which will best appear from his owne¹⁴¹ [table in *Figure 8*]. [f. 42v] He disbands h wholly, as also the u after q as useless, and e *moll, he noted with an apostrofe, as for come[,] com', and for before[,] befor', with some other such regulations, as being considered will not be found unreasonable; and accordingly his books were published.

It is likely he took some hints from the pure Anglo-Saxonick orthograpy, in which I have observed a similitude with his letters, as Ðat Ðis for that this.¹⁴² But some have *conceipted the occasion was taken from the then queen's¹⁴³ broken way of speech, as forreiners use, who cannot speak our and the Greek *th* or *theta*. And wee may observe, that as they [foreigners] pronounce, the English language is very legible, from the base definition of the elements.¹⁴⁴ And in making the orthograpy easy, he complemented her Majesty [f. 43] to whome he bore an extraordinary respect and service. But whither that or, as I rather thinck, out of desire to correct the English orthograpy, and to reduce it to its originall standard, the Anglo-Saxonick; or els hoping in time to lead the pronounciation from those difficult aspirates wee sometimes use and forreiners cannot sound, whereby they might be apter to receiv our language; or ought els best knowne

that but not without difficulty, becaus he [Butler] had a different caracter'. See also ff. 84v–85 in RN, 'An essay of musicall ayre....' (UK:Lbl) 32536: ff. 1–90 (middle period), who draws attention to 'a musicall grammer ever to be recomended, compiled by a learned man, and compleat in all grammaticall formes; it was put out by a famous master of sciences Mr Butler, and I doe not know another in any language comparable to it; and one may be secure that whatever is done persuant to the prescriptions of this work, cannot be irregular or absurd; but [musical] ayre is to be drawne from other fountaines then gramaticall exactnesses.'

¹⁴¹ MS does not carry over the catchword ('owne') at f. 42v.

¹⁴² Ð is Butler's symbol for the sound mentioned by RN in the sentence following.

¹⁴³ I.e., Elizabeth I (1533–1603), queen of England and Ireland, to whom Butler dedicated his '*Bees*'.

¹⁴⁴ RN seems to imply that Butler's text is easy to read if one (mentally) pronounces words by breaking them into their basic elements somewhat like foreigners (actually) do.



DE
Printer to DE READER.

A Long de Antiquiti, Certainti, and Faciliti, of de Orthogra-
pi or true writing, used in dis and oder Book's, bee sufficiently
demonstrated in de Englis Grammar; yet, becaus de Aspirat's (wie in-
dced' ar most' easy) seem' to som, at de first sight, difficult and obscur'; I
thought it not amis, in dis vacant pag' to explan' dem, by deir sim-
ple Consonantes and de Letter of Aspiration [H:] of wie dey ar noting
els, but Abbreviations.

Theta, or Thau.

Dhaletb.

Kbi, or Khaph.

Ghimel.

Phi, or Phe.

Shin.

ε	} is	th, lik' Θ or Δ: as in tiffel, tank.
δ		dh, lik' γ: as in dis, dat.
ϵ		ch, ----- as in eain, eapter.
κ		kh, lik' χ or Δ: as in karakter, Tikicus.
ϝ		gh, lik' λ: as in hig, nigti.
φ		ph, lik' ϕ or Δ: as in pyfik, pilosoper.
ψ	}	sh, lik' ψ: as in fall, fibbolea.
ω		wh, ----- as in wat, wen.

Not becr', dat, of all de 8 Aspirat's, Ε and Ω ar peculiar to de
Englis: de rest ar common to oder Languages wie ours: You may
bee pleased also to obseru, dat E Sonant and E Silent, becaus differant in
pouer and us', ar for de Readers ear, differenced in Figur' also. And dat
Q being (as de Nam' importet) an Abbreviation of C or K and V, an o-
der V after it, having no' us', is der'for' omitted, as superfluous. See de
Prefac' to de Grammar, and eac Letter in his plac'.

J. HAVILAND.

Table of phonetic symbols
in
Charles Butler's The Principles of Musik (1636) (A:Nk)
Figure 8

to himself, moved him to labour such a chang[e], I will not determine. It being certein that it never succeeded beyond his owne practise and publishing, and much impeded the success of his books. For I never heard of any other [books] printed in his characters; and latter editions of his that bore it, particularly that of *Bees*, as I have seen,¹⁴⁵ to make them saleable, were published in the vulgar way.¹⁴⁶

Those who read aim to be diverted or informed, which they would have on easy termes, and not to be fatigued as scool boys, with hard language and uncomon characters. And in this respect books have some advantage of oratory. For a fair impression and caracter in our native tongue, invites and reconciles more then the proem of an haranguer; but a *durty book with paper and caracter disagreeable shall be tost aside. This is the hard fate of¹⁴⁷ [f. 43v] manuscripts, which are slighted and seldome[,] where they occur, looked upon, becaus it requires time and attention to obtain a ready use of the characters, so as to read them with eas.¹⁴⁸ This is one thing which makes the imployment of an antiquary, a sort of profession, and that so litle delighted in, that few but very peculiar geniuses will endure the paines of learning the antique *Gothick wrighting.

It is remarkable how flux a thing is language, that the very wrighting, no more then style and pronounciation, will never be at any stay, but roll from age to age with perpetuall chang[e] and variety. The first printing was by imitation, or *fac simile, of the then manuscripts as most comonly they were caractered, with many abbreviations for eas and dispatch. And it is well knowne how all the manners of charactering[,] both of wrighting and print, and the current abbreviations are changed. For an old print is as *fastidious as an old manuscript, and few, if put to it, could save their necks by reading

¹⁴⁵ (UK:Lbl) Add MS 32529: f. 42 has 'which I have seen both ways', i.e., with and without the phonetic symbols.

¹⁴⁶ Later editions of '*Bees*' (*The Feminine Monarchie*) were published in London (1623), Oxford (1634) and as Latin translations (London, 1673, Oxford, 1692).

¹⁴⁷ MS has 'ma-' as the catchword on f. 43.

¹⁴⁸ RN would have been well acquainted with some of the 'uncommon characters' used in engrossing legal documents—Pipe office, Exchequer, Court hand, Running court, Chancery, Old manuscript, etc.

out of it. In fine[,] men are loath to imbarke in difficultys, unless great zeal or profit at the end engageth them. And for that reason wrighting and printing (which is now become a trade¹⁴⁹) designed to have effect by men's spontaneous use of them, should keep close to the comon mode, improving, if it may be, rather then [f. 44] varying from it. And all *newfanglements, however speciously introduced, are aversions, and cross to the designe of a favourable publique acceptance.

Dr. Wilkins' designe¹⁵⁰ had two aimes: 1. to institute a caracter that should be universally knowne[;] and the other to forme a language peculiar to the sciences to be as universally understood. This was magnifick in proposition, and executed with inexpressible industry and happyness of skill. And if gaine had waited on the practis, as men expect from inventions of much less sence and use, the designe had infallibly taken. But being a contrivance of that sort, that however comodious it was to learned correspondence, men did not thinck the benefit, a compensation for the paines of gaining a ready practis. And from thence it became wholly neglected and layd aside.

First as to the character. The author had a penchant to forme it after the configuration of the organs of speech in the action of pronouncing. So as, by a good anatomy of the throat, etc.[,] all persons might collect the sounds expressed by the characters, which would make them naturall as well as universall; and mankind [would] allwais bear about a standard of interpretation, whereby in all ages and places the characters might be resolved. But for inexpugnable impediments he concluded [that] this could not be done, and that all marks or characters of [f. 44v] sounds must be institutive and not naturall. But to come as neer it as was possible, he accomodated his character to things; and as those were derived and branched out from principles, so his characters should be diversified. And for this porpose, he took extraordinary paines in making a digest

¹⁴⁹ See *infra* Appendix B: [NORTH] 1713 and [NORTH] 1714 for RN's problems with the publisher, Edmund Curll, which may have given rise to this statement and its repetition *infra* f. 49v.

¹⁵⁰ I.e., in his 1668 *Essay*.

of all things, accidents, and qualitys, as language had to doe with, deviding them into genera, species, and individuals.¹⁵¹ And accordingly the character of the genus was varied, first by species, qualitys, etc. and then by individualls, in all which the generall mark was eminent or presiding. Whereby you at first view might know in what genus the buisness lay, and so by analogy help the memory.

Next the language was built upon the same sceme of genera, etc.[,] which were but 40 for which sounds were appropriated. Wherein to supply all that variety [that] was needfull to make the language copious and comprehensive, he borrowed from the alfabet of divers languages the marks or letters which were not comon to all, which multiplied the vowells and some consonants, as from the Greek α , ω , ϕ , δ and so ϵ , η , ν , and the like from others, much increasing his alphabet and the significations of it. And in the management of the whole matter, he hath brought together a vast treasure of learning and critiscisme about language and gramer, even to exhaust [f. 45] the subject, and leav nothing for others to add or scarce to know beyond it. And I may with assurance affirme, that his book[,] of all extant of the kind, is a nonpareil, and a most usefull repertory of all that's (probably) knowable in the history of speech and characters in all ages, and [in] most noted parts of the world.

But notwithstanding all these perfections, the novelty, and crabbed paths that lead to the gaining the use, averted its acceptance; and all that ever succeeded towards it was a few letters wrote [to] the author in his character, and some in his language.¹⁵² And now the

¹⁵¹ According to Wilkins, *Essay*, p. 22, he would 'first lay down a Scheme or Analysis of all the Genus's or more common heads of things.... And then shew how each of these may be subdivided by its peculiar Differences.... After which I shall proceed to enumerate the several Species belonging to each of these Differences, according to such an order and dependence amongst them, as may contribute to the defining of them, and determining their primary significations.'

¹⁵² A number of members in Wilkins' circle did write such letters, but not to Wilkins; see Slaughter, *Universal Languages*, p. 181, and Salmon, 'John Wilkins' *Essay*', p. 200. It is possible, however, that RN got this information from Robert Hooke, who was involved in Wilkins' project and who was acquainted with RN, as well as some other members of the North family; see Kassler, *The Beginnings of the Modern Philosophy of Music*.

book hath a peacefull repose in librarys and among the upper folios, in booksellers shopps, and very few if any, since the order of the first impression was cooled, have studyed or perused it. The memory is a faculty so fraile, that it will not retein many particulars of any sort, without perpetuall repetition or practis, but either the order or the things themselves will slipp and let in confusion, such as makes a fresh trouble to reinstate or regulate. So it is with language, which is a parcell of signes of sounds, and those of things that subsist in the mind, which must needs be very numerous, as particularly these [characters] of Dr. Wilkins. Which a man, if he makes it his buisness, may learne, but must also make it a continuall buisness to retein. And that cannot be done, unless [f. 45v] either his darling pleasure, or his dayly buisness lay in it. So it is with us ordinarily, wee read books for diversion and pleasure, and then, for profit under professions; but that which is more considerable is, our dayly talk and correspondence is in it.

No wonder that our mother tongue seems as a thing naturall to us[,] wee have it so ready and perfect. But if by these means wee gain a forrein language, nothing is more common then to loos it againe by disuse; and every abatement of the exercise breeds imperfection, and trouble in the practise. For this reason it is that understanding a strang[e] language by books and by the speech are two [different] things; and the practise of the one doth not give the other, tho it will help much towards it. And so for speaking, one that reads and pronounceth from books as well as a native, without the exercise of comon dialogue, is ever at a loss to speak. The whole affair of language is custom or habit, which onely creates a practik skill. Therefore the Doctor's character and [philosophical] language could not obtein, for when some learn't it, they could find none to correspond with but the author himself; and for want of that imployment, all their labour was lost. And this consideration aforehand, [—] as who shall I write to, who will write to me, what books shall I have to read, and the like? which have all a negative prospect [—] averted all from the learning.

[f. 46]

This doth not happen onely to such new inventions, but [also] to ancient and good languages, which are not sought after, becaus

there is small occasion of using them, as of the Orientall, and particularly Hebrew, in which there remains no book pure but the Bible. The Arab hath little or nothing of worth to compensate the infinite paines requisite to compass a language so wholly alien to our owne. And if any are pleased with the imployment of studying any of these uncomon tongues, they are censured as injudicious spenders of their time, taking vast paines to litle or no porpos, as Hebrew roots are found to flo[u]rish most in barren ground.¹⁵³ So says the *rallieur most *sabinically. Yet wee must allow a noble [branch of] critiscisme to dwell here [in the study of uncommon languages]. But on the other side, Latin and Greek are, or ought to be knowne by all students[,] even gentlemen as well as professors[,] since sacred and humane learning lys treasured in them.

I may venture to affirme neer the same use [may be made] of most of the European family of languages, as from their affinity I may style them, such as English, French, Spanish, Italian, etc.[,] in all which may be found books of excellent knowledg and use, some in one and some in other subjects. As to instance[,] English, for theology, controversie, and devotion, conteins more, and more profound and copious, in those subjects then all the languages of Europe besides. Which is to be ascribed [f. 46v] to the freedome that hath place in our nation, as well as their being exercised under the insults of adversarys of both extreame[s], papal and fanaticall, which doe but too much exasperate their studys and pens.

I have bin told that many Hungarian and German *theologues have voyaged into England onely to know the language, for the sake of the excellent religious books extant in it. It would be but a sorry

¹⁵³ *Hebrew roots are found to flo[u]rish most in barren ground*; see Butler, *Hudibras*, Pt. I, canto i, lines 59–60. For RN and, possibly, for Butler, an allusion to different theories of the origin of language, e.g., (1) that European languages derived from Hebrew roots; see Theophilus Gale, *The Court of the Gentiles, or a Discourse touching the Original of Human Literature* (Oxford, c.1669); (2) that Hebrew roots had influenced the speech of England, as believed by Joseph Mead [Mede] and John Ray; see Raven, *John Ray*, p. 171; (3) that Hebrew was the source of all other languages, according to the mystical assumption of the cabbalists; see Aarsleff, 'John Wilkins', p. 372; and that all letters derived from Hebrew characters; see Wilkins, *Essay*, pp. 5, 10–11, 13–14.

peregrination, to gaine onely a caracter and [philosophical] language, which if the world [would] agree to use, may be worth while, otherwise worth¹⁵⁴ nothing; like that [fable] of the camel, that went to Iupiter for hornes, and returned without ears.¹⁵⁵ And this was the unhappy case of Dr. Wilkins' learned and generous work, which I can accuse of nothing imperfect or perfunctory. The great error on the author's part was, not foreseeing the consequences; but wee may be satisfied as it is, for had that bin duely weighed, wee had wanted an accomplish't work[,] and he had saved an imens pains imployed to compose it. But I must also excuse the author and blame the republik of vertuosi, who drew him in and left him in the lurch,¹⁵⁶ for they seemed to call for such a performance, as one of the most important desiderata. So men may suffer by following a publik voice. However if ever they have a fancy to doe the author right in the use of his labours, they have them, and so forth as to that.

[f. 47]

Here is ample demonstration, how impracticable it is to institute or reforme language by swift or larg stepps. Whoever attempts either must build slow and upon the foundation of ordinary usage, choosing words apt and smooth, and voices [of verbs, active and passive], and above all[,] inviting perusers, and such as remember and repeat or quote, by excellent matter and sententious brevity, yet not such as shall appear stiff or affected, but easy, to insinuate by surprise, as if the thought of the writer were no more *on the tenters then the understanding of the reader. For affected *turnes are farr from pleasing. I cannot tell why, unless it be a sort of arrogance, or pretension of somewhat uncomon, or superior that offends. Seneca is a criminall of this sort, but one that may be

¹⁵⁴ MS has deleted this word, but it is retained for sense.

¹⁵⁵ I.e., Aesop, *The Complete Fables*, p. 108: Fable 146, 'The Camel and Zeus', the moral lesson of which is that many, through greed, look upon others with envy, not realising they are losing their own advantages.

¹⁵⁶ *left him in the lurch*, i.e., to desert a person in a difficulty; see, e.g., Butler, *Hudibras*, Pt. I, canto iii, line 764: 'And tho' th' art of a diff'rent church,/ I will not leave thee in the lurch.'

acquitted like an arch-theif for his witt.¹⁵⁷ The worst I ever saw, is Lord Falkland's *Edward 2*¹⁵⁸ imitating Salust's style;¹⁵⁹ but it proves so unfitt for an English dress, that it is not easy in reading to bear it. Here are the extremes. Our best for this excellence [i.e., unaffected style] are Terrence¹⁶⁰ and *Hudibrass*,¹⁶¹ where exquisite witt and judgment flows as comon talk. When occasion is[,] figures in speech

¹⁵⁷ Seneca [Lucius Annæus], the elder (c.54 BCE–CE 39), Roman rhetorician and father of the statesman *infra* f. 105. In the ten books of *Controversiæ*—imaginary legal cases—of which only five books are now extant, he gives the opinions of the rhetoricians upon each case from different points of view, their division (*divisio*) of the case into different single questions; and the devices (*colores*) for making black appear white and extenuating injustice. Each of the books is introduced by a preface that discusses the characteristics of individual rhetoricians; and the whole is supplemented by the perhaps incomplete *Suasoriæ*—exercises in hortatory or deliberative oratory—in which the question is discussed whether certain things 'should, or should not be done'.

¹⁵⁸ There were two so-called histories of Edward II attributed to, but not written by Sir Henry Cary (d. 1633), 1st viscount Falkland: (1) *The History of Edward II. King of England ... Written ... in the year 1627* (London, 1680); and (2) *The History of K. Edward the Second...* (London, 1680). RN probably refers to the latter, a pamphlet attack on the government, patched together by the lawyer and poet James Harrington (1664–93).

¹⁵⁹ Sallust [C. Sallustius Crispus] (c.86–34 BCE), Roman statesman and historian, who wrote in a perspicuous style but affected archaic words. His *Bellum Catalinæ*, as adapted by Ben Jonson, *Catiline His Conspiracy* (1611), is cited by RN at f. 77 (unedited sect. 9), when referring to various 'Catalinarian maximes in the holy science of throat-cutting'.

¹⁶⁰ I.e., Terence [Terentius Afer, Publius] (195–c.159 BCE), Roman comic poet, who, with Caesar and Cicero, was renowned for pure Latinity.

¹⁶¹ I.e., the satirist Samuel Butler (1612–80), author of *Hudibras*, a poem in three parts (London, 1663, 1664, 1678), in which the 'heroes' are the knight-errant, Hudibras, and his squire, Ralpho. RN's enjoyment of the poem is clear from his quotations from it. And elsewhere he uses the name of a character therein to describe Locke as 'the Magnano [a tinker] of understanding that battells innate ideas'; see f. 221 in RN, 'Authoritys' (UK:Lbl) Add MS 32546: ff. 207–230v (early period). Butler's patron, to whom he bequeathed his manuscripts, was the barrister William Longueville, a friend and colleague of both FN and RN. Regarding Butler's manuscripts, RN, *Life/FN*, p. 459, opines: 'It may be better perhaps they never see the light, for as farr as I can judg, that have perused some of them, under a variety of surprising witt and lively conceipt, there is couched but an aukward morality.'

must not be baulked, not [even] such as may be called simile, when something is like something that hath nothing to doe with each other. But when a word touching a knowne subject opens to the [f. 47v] mind a spacious feild of variety and substances, which to express would fill an whole page, as the mathematitian's symbols, that [word] lays downe in a thumb's length, that which in *solute speech would be monstrous as larg, and sometimes scarce capable of being so exprest. The syntax must be just, and the periods tuned to the breath.

But all this will not doe without a considerable party, and of the great ones; such may lead, tho they cannot drive a populace. For it is not authority but fashion that creates a language and its modes; and by like means as plants[,] [fashions] grow from many litle occasions and the usage of many persons, especially of esteem, as from seeds and roots. And under this warrant¹⁶² all manner of variety of style, good and bad[,] pass muster, even *anomala become elegancys. The alterations when any are made, besides those that chance creates, move from the witts and crittiques, or rather [from] such of them as write or speak in publick. But these dare very litle, without the continuance and encouragement of such men as have more authority then meer witt will procure. And in a word, it must be a combination of the wealthy and great, to incite all the writers to endeavour a refinement of a language, and also by their example in all they offerr att, to screen them, that must institute [f. 48] a process to alter speech affected for the better.¹⁶³

Single persons of themselves may doe something, if they build upon excellent stuff, that is, sence and substance, which shall make its owne way **con pie di pianto*; but to very litle and slow effect, if the many, and those of the preferred, doe not conspire in the same

¹⁶² I.e., the usage that has been sealed by the approval of polite society.

¹⁶³ It is important to remember that RN writes in an era when 'witts and crittiques', as well as artists and musicians, still required patrons. See, e.g., RN, *The Muscicall Grammarian* 1728, p. 267: 'nothing advanced musick more in this age [of Charles II] then the patronage of the nobillity, and men of fortunes, for they became encouragers of it by great liberallitys, and countenance to the professors'. For an instance of this, see Wainwright, *Musical Patronage*.

designe. It is well knowne, that the French speech by this very means hath bin wonderfully of late years altered for the better; but I thinck they have carryed it too farr, and beyond their designe. For an extraordinary care of their periods, as if they were verses, to compose them exactly in time and tune, hath introduced a sort of stiffness or affectation; as one may observe in divers of their late authors, and particularly [the author of] *des defauts d'autrui*,¹⁶⁴ who hath many vaine repetitions of words, that his periods may come off roundly, and be sententious, as if he were wrighting of proverbs.

It is the happyness of every age to thinck their speech more refined then formerly. As to the English of our time, I beleav it will be readily accounted so, for it is certein wee like it better then what wee read in books of Queen Elizabeth's time (to goe no higher). But I can discerne but small alterations since, and those not very important. The cheif consists in the disbanding some words, and using others in their room, when perhaps the former were as well if not better. [f. 48v] As to instance, the word sundry is lay'd aside, and instead of it wee use, divers; and what is gott by it? So, albeit, how be it, moreover, insomuch, and the like are not so frequently, if att all, except in *solemne-formes, used. And who can say but those did well enough? Instead of, the greatest consequence wee, from the French, use the last consequence, and where's the advantage? Instead of their, it stands me much upon, wee say, it much concerne me. There are many others of like kind[,] both words and phrases, as one might collect, but these suffice.

The greatest changes wee can observe in language are from comedys, and by those wee find the diversity more in humour then in speech; so that I cannot say the language of our time is much purer then it was in those [Elizabethan times], and ever since, downe to us. I doe not say this to argue [that] our language [is] so perfect, as not to be altered for the better, but that it is well enough to *serve our turne, if wee are carefull of style, and [1.] avoid those failings which are such, in all languages, as may be called tautologys and

¹⁶⁴ I.e., *Réflexions sur les défauts d'autrui*, published anonymously in 1692, but attributed to Pierre de Villiers (1648–1728). For RN's translation of, and modifications to Villiers' style, see *infra* Appendix B: [NORTH (tr.)] 1701.

impertinencys; and [2.] labour to collect the fullest sense in fewest words, and [3.] draw on the style even and smooth, not too extended or cramb'd with parentheses, which makes us forget the nominative case, before wee come at the verb, nor too short and snatching, as moving by *starts, or in *fitts and girds as a hogg pisses. Which failing I rather note [f. 49] becaus a late poetick author, in an octavo peice about the constitutions of England and Germany,¹⁶⁵ is notoriously guilty of it. Nor is choice of words to be neglected. For in the ardor of thought bold translations, figures, and uncomon words are allowed, so [long as] they are not too frequent, and without great reason couched to buoy them up, as when they enter empty handed, and onely for sound or caprice. But within the scope of choice the usage allows[,] take the better;¹⁶⁶ and if a rough antique word, and one more vocall or (as wee judg) polite, hath any competition[,] take the latter.

This method generally persued with care and *discretion will guide those changes of language as will of cours happen to be all for the better. But in making comparisons, let us observe to collate the best with the best, and not wors and better. For the best writers in clumsy times use a better style then the worst, when more polite. As compare Chaucer's prose¹⁶⁷ with Mr. Dryden's,¹⁶⁸ and both will be found good, and to vary most in words as the ages of either ordinarily used. But bring to these some of our perfunctory

¹⁶⁵ I have been unable to identify RN's reference.

¹⁶⁶ MS has 'even uses the better'.

¹⁶⁷ Geoffrey Chaucer (1340?–1400), poet, author in prose of *Canterbury Tales*. According to Randall, *Gentle Flame*, p. 9 and n.19, RN's great-grandfather, Roger North, owned what has been described as one of the finest of all surviving copies of that work. Now known as the Ellesmere manuscript, it has been reproduced in facsimile as *The Ellesmere Chaucer*.... (Manchester, 1911).

¹⁶⁸ John Dryden (1631–1700), poet, playwright and translator, who claimed that the purity of the English 'tongue' began with Chaucer, a lineage that Dryden himself continued by rewriting, modernising and imitating Chaucer. See Dryden, 'Preface', *Fables, Ancient and Modern*.... (London, 1700), which also contains seven paraphrases from Chaucer; see also Macdonald, *John Dryden*, pp. 62–3.

pamphletiers,¹⁶⁹ and notwithstanding their fashionable jingle, regarding not the mode as to words and phrases but the true vertues of a style, how short doe they come even of Chaucer? But I have dwelt too long on this subject, and touching an [f. 49v] observation or two¹⁷⁰ more, conclude.

The first [observation] is, that printing[,] now a trade in the world, hath occasioned much harme to our language, and hindred the improvement of it. For when books were not publish't, but by hand wrighting, the cost and trouble, as well as loss from bad books, kept back many such from being ever published; and more care was taken of matter and style to be concise, full and elegant, that books might be thought worth publishing, nor would the booksellers care to medle with such as were not so. Then [in those days] the comon speech had a regulation from the style of books, which was ordinarily in vertues much superior to it[,] which wee find egregiously by the wrightings of the Greeks and Romans. But now printing is so comon, and publishing books so easy[,] every one's cruditys come forth; and wee find ordinarily in books litle better then comon talk. Nay, instead of the style of speech being corrected by books, that of books is depraved, by the devious and incurious errors of comon speech. The other [second] observation was of a society of travellers who made a law to mulct those of their company, that spoke a word incorrect or *out of joynt, by which they gained great accuracy of stile in their ordinary conversation. The [third and] last [observation] is of what is reported to be an exercise of the Levantine Jews,¹⁷¹ who will take a sentence, and practis to express the sence [of it] in fewer words, and he that doth it in fewest is the bravest fellow, by which they wonderfully *contract their language. These are methods of improving speech as it may be done, gradually[;] and many others might be found out, if a people had an humour to practise them.

¹⁶⁹ See *supra* f. 16v.

¹⁷⁰ RN offers three, not two observations.

¹⁷¹ RN probably had the report from DN (3), who was 'less hostile to Moslems and Jews than many of his contemporaries', a 'toleration of differences' that may in part have been 'a consequence of living so long in the Ottoman Empire'; see Grassby, *The English Gentleman in Trade*, pp. 201–7.

[f. 50]

8. Notes relating to the origination of government, laws, and their peculiar language

In the way to treat, as I intend, justly of the laws of England, and the languages of them,¹⁷² I cannot get over the consideration of government, and of laws in general[,] with the origination and naturall process of them.¹⁷³

1. I shall have occasion often to referr to nature, a word very prompt, and apt to be used on divers occasions, but rarely defined. Most people thinck they know their owne meaning when they speak it, and if you ask them what that is, they all answer the same, ‘why nature’. I therefore would have it declared beforehand, in what sence and latitude I use it, els it will be hard to avoid ambiguity, and I shall not, speaking of the laws of nature, be put to interlace *fastidious explanations.

There is in this respect, a sort of paralell between the order of inanimate things and humane laws. Those things which seem to move of themselves or by vertue of some universall principle, as gravity, fluidity, and vegetation, are called naturall; and others, that stirr not but in compliance with the power of externall agents properly applyed to them, as vehicles, automata, and machines, are called *artificiall. So it is with laws. Such as are so adapt to the necessary and perpetuall occasions of human kind, [f. 50v] without the good influence of which, society cannot subsist, but must perish; as tending to comon utility and preservation; and averting confusion and destruction, the one not to be had, nor the other prevented without them, are figuratively styled naturall. And such other laws, as are introduced for melioration rather then necessity, answer to *artificiall, and are called humane.

¹⁷² See *infra* ff. 84–111v.

¹⁷³ RN’s consideration proceeds in five numbered sub-sections—‘Notes’—as follows: (1) ff. 50–51v, (2) ff. 51v–52, (3) ff. 52–55v, (4) ff. 56–61v, (5) ff. 62–67. After a digression (unedited sects. 9 and 10), he then turns to the subject of law in general and the common law in particular, ff. 84–111v.

I doe not here suppose, as comonly is done, that this distinction is a notion innate, or imprinted supernaturally in men’s minds, and emergeth like the Pythagoreans’ knowledg, as by reminiscence.¹⁷⁴ But it is the result of experience, and that of all men in all times and conditions, more clearly as they are more capable of and practised in politicall exercitations; of which more afterwards.¹⁷⁵ In the mean time wee take it for granted that all persons, of mature reason and experience of life, must agree that the laws of nature are *concreate with human kind, coevall and coimutable with the state and condition of it. But humane laws are arbitrary, and may be or not be, or [be] any way, as powers shall thinck fitt to impose. As to these rules of living, which I call laws of nature, neither instituted, nor revocable by human power, they must be referred to a sound judgment and right intention to declare and owne particularly what they are. [f. 51] For laws, as well as wisdome, are justified to her children.¹⁷⁶ And such as pleas may *sceptiscise **ad infinitum*, upon any model [that] shall be drawne upon this sc[h]eme of right and wrong by nature; and it is impossible to discountenance them in it, as usually is done in mathematicall propositions. Becaus the stress of the dispute will fall on the first principles, which being collected from experience are not so sensibly terminated as quantity. But wee pass by all such as immodest and disingenuous debasers,¹⁷⁷ unconvinceable by any arguments tho never so just.

¹⁷⁴ I.e., metempsychosis; see Plato, *Phaedo*, 92c. According to this doctrine, learning is merely recognition of what one already knew innately, so that truth, which occurs by the coincidence of knowledge shared innately by humans, is manifested by a process of instantiation or exemplification of particulars—most especially, in naming and in rational discourse that are in harmony with reality.

¹⁷⁵ See ff. 67–83v (unedited sects. 9 and 10).

¹⁷⁶ *wisdom ... justified to her children*: see Matthew xi.19, Luke vii.35 (both of which have ‘justified of’); see also *infra* Appendix B: [NORTH] 1714. For RN, laws and wisdom are made just or right (‘justified’), because warranted or supported by the evidence.

¹⁷⁷ For some ‘debasers’, see *supra* Chapter 2 sect. 2.3. But from the context in the rest of section 8, an allusion to Hobbes, who RN *infra* f. 60v describes as a ‘synthetick filosofer’, that is, one who proceeds *more geometrico* from principles

I take these morall laws of nature to be such as follows:

1. to condemne none without hearing,
2. to keep covenants,
3. to obey laws,¹⁷⁸
4. to hurt no creature vainely,
5. to refuse gratuitous aide to none,
6. to deal with all men impartially,
7. **instar omnium*, to doe as wee would be done by,

with many others of like quality, as by constant experience are found necessary to a peacefull comunity of life, without which, human kind cannot subsist, but degenerates into savage brutality, and most especially being no profound mysterys, to result from meditation and paines, but instilled with the breath wee draw. So that however nice [f. 51v] the disputing part is, the knowing part is obvious and needs no informer but men's consciences, if they have not a **pravity* of nature, which disposeth them either not to attend, or spitefully to contradict their [inward] voice. This is the state, as I take it, of the law of nature, whereof the obligation is not antecedent to the birth of men as humane laws are[,] tho the naturall tendencys of humane nature, that caus them, are presupposed. But [the law of nature] grows up in men's consciences by sociable practises, which is their owne experience, or [by] teaching, which is the experience of others infused in them who bring onely a capacity¹⁷⁹ and not the notion into the world with them. And speaking of nature with respect to laws, I desire to be understood according to this previous declaration.

2. It is usuall for antiquarys, when in any foreign history or [legal] code, they discover passages, which, (tho faintly,) resemble some English usages, to pronounce strait, that the latter is immediately derived of the other. I grant from such conformity it is

'collected from experience'; see *infra* f. 60v. In criticising Hobbes, therefore, RN focuses on the principles; see *infra* ff. 56–61v.

¹⁷⁸ (UK:Lbl) Add MS 32529: f. 47v adds: 'duely enacted'.

¹⁷⁹ I.e., RN's sensori-motor capacity ('nature') plus 'instinct'; see *supra* Chapter 2 sect. 2.1.

justly inferrable, that both nations have come from some comon stock, which may be Sythian, Asiatick, or (to be sure) the *Noachides, but not so surely [inferable] when or how the separation of them was, nor when the stock was intire. Besides it is possible that nations may entertein customs [f. 52] not unlike those of other nations or former ages, as well as retein them. For from meer likeness of condition and circumstances, severall societys of men or nations shall fall into similar methods of proceeding and rules of life, and all without the least aid of tradition; as I may shew more fully anon.¹⁸⁰ It is [therefore] impossible for the antiquary to distinguish when customes are originall and when traditionall. As for instance, there is a notable resemblance between the German and English customes; and one may vehemently suspect they came over from thence with the Danes or Saxons, if not [with] the Normans, who were also of those parts.¹⁸¹ But yet it is no solescisme to affirme they might have place in England prior to any of those invasions. For what hinders but that all the west of Europe might injoy laws and customes under a generall conformity, received by tradition from some ancients union, and [either] propagated together with the generall dispersion of mankind,¹⁸² or els assumed from nature or paralell occasion?¹⁸³

¹⁸⁰ See point 3, ff. 52–55v.

¹⁸¹ For the Saxon and Scandinavian invasions (410–1065) and for the Norman conquest (1066–1215), see *infra* ff. 106v–108v, 109–110v.

¹⁸² Genesis iv–xi gives three accounts of the dispersion of mankind: (1) by Cain and his posterity; (2) by the descendants of the sons of Noah; and (3) at Babel. From the sixteenth century, the second account was the usual means of tracing cultural diversity to one source until challenged by geographical knowledge and biblical criticism; see Hodgen, *Early Anthropology*, pp. 230–32. Note that Selden debunked historians who accounted for the origins of government in Britain by the myth of a founding monarch—either Samoths (a grandson of Noah) or Brut (a refugee from Troy); see Christianson, *Discourse on History, Law, and Governance*, p. 18. For RN's scepticism about such founding myths, see *infra* f. 103.

¹⁸³ I.e., RN's preferred explanation; see, e.g., *infra* f. 55v.

3. The *Gothic model of ending debates, by the sum[m]ary judgment of the *vicinage,¹⁸⁴ is the nearest to honest nature of all other known laws. This [f. 52v] may seem a paradox. But if wee reflect on the ways men, upon falling out, ordinarily take and being in the height of passion and anger, when nature will shew it self most undisguised, wee shall find reason enough to assent to it. For wee shall observe all partys with great fervor appeal to the audience, and that[,] as carefully attending[,]¹⁸⁵ ready to give in a *verdit. ‘Did you see,’ says one party, ‘this, or that?’ ‘Did not I doe so and so?’ says another. And all will be judged by the *company, who¹⁸⁶ desire them to speak. Thus all our mobb and gaming wrangles are ventilated afore the assembly. What a solemne, and (for resemblance with antiquity) venerable court of justice is the king about a rude company of wrastlers, where causes of *foyles, and falls are determined by vocall force and authority?

The first planters of nations were but societys of men [that] met together upon equall termes with a designe to search for means, and with a joynt force, to amend their condition. Many may have bin regular colonys, and carryed out their laws with them, as wee read in the storys of the Greeks [f. 53] and Romans, especially the former,¹⁸⁷ among whom it was comon for cittys to make out their pedigree and claime kindred, to gaine favour or advantage from the more powerfull. But these are out of our pale, that look in other times, and other parts of the world, among the uncultivated generations, that often passed to and fro, and overturned states and empires that lay in their way. Wee have litle reason to ascribe to such any formall prejudices of law, but rather suppose them to act more upon nature, then institution. For savages are not accustomed to deal upon *formed articles. But on the other side wee must allow them so much

¹⁸⁴ For this Anglo-Saxon procedure, which in contentious matters was calculated to avoid reasoned decision-making, see Baker, *An Introduction*, p. 4.

¹⁸⁵ MS has ‘attending and’.

¹⁸⁶ MS has ‘and’.

¹⁸⁷ I.e., stories of primal people, real or imagined, which began with the epic poems attributed to Homer.

experience of rule and order, as is necessary for the subsistence of their societys, and this tinted with their breeding, however *impolite, whereby they know the consequences of agreement and of disagreement. Els wee could not argue any thing from their supposed actions, more then from those of babes of a month old, or such as Mr Hobbs supposeth his *nubigenall men to be,¹⁸⁸ ignorant of humane nature and affaires, and impotent of all experience of life. A sandy foundation of *policy, as I hope to demonstrate.¹⁸⁹ But as for our planters, I thinck a measure of them may justly [f. 53v] enough be taken from the visible *scantlings and ordinary observable stepps of our comon thoughtless mob.¹⁹⁰ Tho in justice wee must allow the latter, tho rude enough of all conscience, much advantage in the way of *civility from their better circumstances of life. But that will give my reflections a greater force as drawne, *a fortiori.

It must first be considered that these planters, rabble as they are, cannot act any thing nor so much as reap together without some means of agreement or order; and having none by institution, [they] must needs fall on that which[,] without subtilety or invention but obviously[,] their condition admitts. And that is to determine all comon enterprises and private debates by the generall voice. As if a man hath got what another posses't as his owne, those two are at daggers drawing ready to fight. 'Hold,' says the crowd, or some fellow more *pragmaticall then the rest, and backed by them; 'and come,' says he, 'bring forth the thing in dispute, and let's hear what both of you can say.' And then the majority or comon voice decides. Every man doth not equally concerne himself in judging the caus, but baul out as they [f. 54] see others[,] whom they pin their faith upon, lead. For implicite faith no where reignes so imperiously as with the rabble.

There is greatest reason to thinck, this sort of gouvernement and judicature should spring rather than any other, becaus: 1. It is equal, *chaque en son gout, to judg and be judged. 2. It is strong and can

¹⁸⁸ Hobbes, *Leviathan*, pp. 183–8 *et passim*.

¹⁸⁹ See *infra* ff. 56v–61v, 66v–67.

¹⁹⁰ (UK:Lbl) Add MS 32529: f. 49v has: 'urban mob'.

enforce obedience. 3. No other (as wee suppose) is provided, and some is necessary, therefore this being obvious, must enter. 4. and lastly, This satisfyes every one, which no other will doe, becaus when some are preferred[,] others are discontented. So that here, without *jurisperite notions, *statutes, *formes, or cheif magistrate, in a society of men litle better then *barbares, wee find all the good effects of a well regulated commonwealth. That is, the whole body moves with unanimity; and when private dissensions arise and appear in publick strife, the authorit[y] is at hand to expedite the differences, prevent disorder, and compell the refractory, *will they nill they[,] to submitt. What can be desired more pe[r]fect under the *legislature of Solon¹⁹¹ and Lycurgus?¹⁹² It may perhaps be sayd that this justice hath somewhat [f. 54v] of the *lottery, and the judgment is by *tale and not [by] weight.¹⁹³ Therefore it were better to have, as the vsage in setled states is, judges assigned of persons fitter for judicature then the many are to determine differences. So as all questions of right and wrong would be nicely deliberated, and the graines of either side weighed in subtile scales, and a scrupul of equity turne them. As to this I could wish with all my heart that the world found such vertue in scrupulous justice, and that the delays, *formes, and extortions that attend it, did not spoyle all. But I am sure the other way, that is, plaine hearing and voting with all its faults, hath one vertue preferable to all the other pretends to, and that is, an end is made, gratuitous and soon, remitting the concerned to follow their private occasions. And that right or wrong a litle more or less is ever best; of which more may be say'd hereafter.¹⁹⁴

¹⁹¹ Solon (c.639–c.559 BCE), Athenian lawgiver.

¹⁹² Lycurgus, according to tradition, the foremost Spartan lawgiver.

¹⁹³ *by tale and not [by] weight*, i.e., proof by reckoning in numbers, not by weighing the evidence. The former was part of the Roman-canon inquisition process, for details of which see Shapiro, *Probability and Certainty*, pp. 174–5. The latter is the deliberative process that RN advocates *supra* Chapter 2 sect. 2.3. The saying seems to have become proverbial; see, e.g., Cohen, *Sensible Words*, p. 9, for one grammarian who delivered his ‘Words not by Tale, but by Weight’.

¹⁹⁴ See *infra* f. 56.

But in process of affaires, the purity of this cours soon wears off, so that wee can scarce shew a just example of it; and that wee propose, is but from the best conjecture wee can frame, at the motions of such a society of men. Yet if it seldome or never happened exactly so, wee are not at a fault, for if it be but in part, or mixt with some instituted [f. 55] *formes, the same will be found true **in tanto*, tho the extreame in speculation best assist our judgment. But to proceed. After the cheif marches and attempts are over, and settlement with some eas begins, fears vanish; and in security[,] lust and luxury grow up, and avarice with ambition have a clear stage. Then enter faction and disorders, out of which[,] as fair flyes out of dunghills, proceed the ordinary declared rules of living wee call [human] laws, and *magistracys as well for executing them, as conducting the state of the comunity. Not so much to meliorate the state of nature but as plaisters to heal its corruptions, or salt to keep good flesh from stinking, and so prevent a gangreen, that is, to conserve a people from utter confusion and destruction, into which their exorbitances would infallibly, if not so prevented, plung[e] them. So that magistracy and laws are rather phisick, then diet to a people; the occasion of which is not from any necessity of nature, but from abuse of plenty. Wherefore nothing is more fals then that the state of nature is a state of confusion and warr, as I shall more fully explaine.¹⁹⁵

In the mean time let us observe that this way of judicature[,] by voting the law in assemblys, is so naturall and acceptable to the people, that whatever els hath bin¹⁹⁶ [f. 55v] set up, that [way] hath not bin parted with, but reteined **moridicitus*. And where the thing hath bin taken away, the people have had a shaddow or name of it left to content them; and whenever they are left to themselves, as I noted in the cases of mob-law,¹⁹⁷ they are guided by it. And accordingly all the successors of these moving *impolite nations, more or less, have laboured to continue what they can of it. But the

¹⁹⁵ I.e., Hobbes's dogma; see *infra* ff. 56–61v.

¹⁹⁶ MS does not carry over the catchword ('bin') at f. 55v.

¹⁹⁷ See *supra* f. 52v.

English more successfully then other nations, with whom warrs, distresses, and governements incroaching have occasioned the wearing it quite out. But wee [English] have in jurys and elections, much of it yet in effect, but much more in opinion, and that as to the content and repose of the people is full as well. And from these reasons I am inclined to thinck that popular law, such as Tacitus¹⁹⁸ means by – **jura per pagos*, was used in England as early as the very aborigines whence soever they came,¹⁹⁹ and [that] it is not necessary it should be ascribed as an innovation imported with the later German invasions.²⁰⁰ I shall conclude this point observing onely that this sort of justice is best for a raw people, and select judges, for a refined or rather, as it comonly proves, corrupt age. For with such, voting is ever influenc't by interest and faction.

[f. 56]

4. The model of Mr. Hobbs²⁰¹ is a *twine of sand. For all his politick dogmata, that as it were to inculcate them by repetition, run thro all his book, leans wholly on this foundation: 1. that the state of nature is a state of warr, in which all things are lawfull. 2. that right and wrong comence onely by pact; as when peace is made after a battell, killing men begins to be murder that before was bravery and vertue. These two points are his hypothesis, which dissolved, downe falls all that superstructure, as he, with no small art, elegance, and industry, hath rayseed upon it. Against which I offer first²⁰² that he hath not proved either [point] to be true. He pretends demonstration, and what? that men in a naturall state without institution, must and,

¹⁹⁸ Cornelius Tacitus (CE c.52–c.118), Roman statesman, historian and author of 'Agricola' and 'Germania', the former containing a short description of the lands and tribes of Britannia and the latter, a short description of a diverse set of tribes characterising Germania. According to RN, *Life/FN*, pp. 109, 386, FN commended the historical method of Tacitus.

¹⁹⁹ I.e., the inhabitants of 'old Brittain'. For RN's hypothesis about their probable origin, see *infra* ff. 102v–103.

²⁰⁰ I.e., the Saxons and Scandinavians.

²⁰¹ I.e., in Hobbes, *Leviathan*.

²⁰² RN offers three arguments against Hobbes; see (1) ff. 56–58; (2) ff. 58–60v; and (3) ff. 61–61v.

in such state, will certainly fight. Now if by possibility they may agree, and live together without positive bargaines, granting (to pleas him) that 'tis odds but they doe fall out, his machine breaks. For a principle must be constant and universall; and if it may, in any instance, fail, it is fals [f. 56v] logick to ground any universall proposition upon it.

But to consider his argument, which I doe not allow as proof, it is drawne from the supposed actions of *nubilar men dropt all at once upon an island, not prejudiced by any knowledg of society or humane practise. These he makes to be ravenous, covetous, ambitious and every way qualified for strife, which in the first place they all goe to work to put in execution. He makes them argue and forecast, as if they had bin old stagers in a populous active country, but by accident brought together into that dispeopled place. So the answer is obvious. This *disprejudiced race of men, must, as to all providentiall courses,²⁰³ be more undetermined, thoughtless, and impotent then children that can just goe alone. Therefore, if I should say the argument were childish, I did him no wrong, tho I brought my self under suspicion of a quibble. It is not just to inferr any thing of worldly policy²⁰⁴ or designe, from the actions of persons void of all knowledg of themselves and the world. It were as reasonable to suppose a nation of slaving changelings as those he introduceth. But be they meer [f. 57] children, such as wee know and can observe, who have capacity, as the *nubigenall men are supposed to have, and some experience tho but litle, whilst the others are allowed none at all, what follows upon their coming together? (For wee allow them able to goe, which I much doubt the others could not.) They observe one and other, and by shy degrees take acquaintance, and then goe to play. Ô, but they are apt to snatch, and say[,] 'this is mine,' etc.[:] and that is an overture of warr. It would be hard not to grant they might fall out[,] as men and weomen doe, about playthings, for objects of ambition and pleasure, that set folks together by the

²⁰³ (UK:Lbl) Add MS 32529: f. 52 has: 'as to all consequences of life,'.

²⁰⁴ I.e., political cunning.

ears[,]²⁰⁵ are no better. But that is a second and not the first intention,²⁰⁶ and corresponds with what I hinted²⁰⁷ of corruption growing up in free societys, that makes positive laws necessary to prevent or cure it. Quarrell doth not enter with acquaintance, as he [Hobbes] must suppose, but by practis.

It's true nature hath wants, for life like fire must be supplied; and when the pabulum fails[,] both goe out. But vertue and vice, equity and inequity grow from a series of dealing in the world. There is a considerable acquired skill and experience of want [f. 57v] and plenty, and of the comparative value or use of things, in order to be covetous or to thinck of monopolising. And no man is ambitious of government, that hath not seen the flatterys of it in others, and felt, as he thincks, the smart of being kept under. Therefore judg of the argument: Humane nature in the process of sociable life is corruptible, therefore it is at first in it self no better then rotten. Men may, and, at some time or other, almost certainly doe, fall out and fight. Ergo, the state of nature is a state of warr, that is, there will be warr sometime or other, therefore it must needs be at first; and when men doe fight[,] there is no peace till they agree, therefore till men agree, there is no peace.

But wee find that this fighting humour is not equall; and he [Hobbes] must suppose all his *nubigenall men to be *philautians like himself,²⁰⁸ and ill natured, covetous and quarrellsome, and why so? There are such in the world, that set men at odds, and in some ages more, in others fewer; and warr and peace reign as it were by

²⁰⁵ *set folks together by the ears*: see Butler, *Hudibras*, Pt. I, canto i, lines 3–4: 'When hard words, jealousies, and fears/ Set folks together by the ears.' See also RN, *Examen*, p. 318.

²⁰⁶ I.e., terms that point at things are called 'terms of first intention', whereas terms that point at terms are called 'terms of second intention'. See also Butler, *Hudibras*, Pt. II, canto iii, lines 589–590: 'Whatever others deem ye,/ I understand your metonymy;/ Your words of second intention,/ When things by wrongful names you mention/.

²⁰⁷ See *supra* f. 55.

²⁰⁸ Hobbes was styled 'Philautus' by the divine, John Eachard, in two dialogues published in 1672 and 1673; see Bowle, *Hobbes and his Critics*, pp. 134–56.

accident accordingly. Wee find even children, covetous and ravenous, as they are supposed, doe not onely love society, and are not well without it, but kind and comunicative also, rather then [f. 58]²⁰⁹ [*crabbed or*²¹⁰ *mean to*] their equalls, and rather then [*fail*] of [*com*]p[an]y²¹¹ to be kind to, will hold forth their bread and butter to the domestick catt or dogg. Therefore it is injurious to suppose all *disprejudis't persons to bear the [*most depraved*] nature, and fals to affirme they [*cannot*] agree but must of necessity fight; the rather becaus there is a iudicature of the society[,] as I have discours't afore,²¹² which is prompt, as any occasion can be, to compell the ill-natured to peace. Therefore that other argument of Mr Hobbs [—] that there being no coercive law, or power among men in the state of nature, to end differences, they must doe it by warr, [—] falls also to the ground. And upon the whole, considering all circumstances, wee must conclude against him, that warr is not from a direct tendency of nature in men but enters, as all corruptions, in time, and consequentially, from particular men's lusts and avarice, and those raised by accident and education, which in other circumstances might have bin otherwise. Therefore as to the proposition, **status naturæ est status belli*, wee may not improperly subscribe *[*cuj*]us *contrarium verum est*.

The next point is yet more palpably fals, [*viz.*,] that all right (supposing none before) [*begi*]ns by contract. To this a short answer serves,²¹³ [f. 58v] *viz.*, then there neither is [*right nor law created*]. For if there be no law or [*previous obligation*] from pact, tell me

²⁰⁹ Folios 58–61v have varying degrees of damage, as well as some fading of ink; see *supra* Introduction to the Edition.

²¹⁰ MS has two catchwords ('crabbed or') on f. 57v, so that they probably were carried over at f. 58.

²¹¹ (UK:Lbl) Add MS 32529: f. 52v has: 'rather then fail, having no other society to partake, will'.

²¹² See *supra* ff. 53v–54.

²¹³ MS does not carry over the catchword ('serves') at f. 58v.

Apollo,²¹⁴ by what law it is, that men are oblided by their pacts? And the admitting that, [—] as who ever denyed it, or held that breach of contract is lawfull? [—] at the same time it is admitted that there is a law, (that is, of nature,) antecedent to pact, by which it is knowne in men's consciences that they ought to stand to their bargaines, whenever they make 'em. If that was not true before, it is not true afterwards, for truth is ever the same. Therefore it is strang[e] to affirme that contract creates all right and law in the world, when there needs a law to make even that any thing, or nothing, for if it were not that in verity all contracts ought to bind before any are made, the very essence of contract, or pact, is taken away, there being no legall difference between no *fact, and a *nullity.

It were a pleasant controversie, when a performance of contract is claimed, a man says, 'It's true I did stipulat[e] as you say, but I desire you will prove that [*I am*] any way oblided by it. For altho I barga[ined,] yet wee did not agree or declare that e[ach]²¹⁵ [f. 59] [ought to] be bound by his bargaine. And untill [*I am*] satisfied that a bargaine without more binds a man, I shall keep my liberty, and not governe my self by my bargaine but by my interest; and I doe not find that in a performance but rather in the contrary.' How is this man to be confuted but by saying that by the law of nature antecedent to all contract, men are bound by their agreements? And it must be urged, that all humane peace, society, safety of life, and property, and in short[,] all morality depends on this principle, without which a citty is a den of theives, and literally **homo homini lupus*. If warr happens, peace cannot be made, nor any means be found to preserve society; for, if there be not a conscience of duty[,] all pretension to law and right is vain. What availes punishment of one, if another thincks himself more subtill and cunning enough to evade it? And it must be exclaimed that without this principle, brutes governed by appetite are the more rationall creatures, and [that] it is more base

²¹⁴ Apollo, in myth, was the deity concerned chiefly with law and order in the universe—physical, social, intellectual and moral.

²¹⁵ MS tear affects the catchword, making it illegible, though it probably was carried over at f. 59.

then brutall to contract and at the same time profess a designe to hold or break as the account turnes. What, [no]t pay an honest det? restore deposits?²¹⁶ betray your enterteiner? and twenty things more as per[nicious], are sanctified by such a fals sc[h]eme.

[f. 59v]

I know it is the comon charg against Mr. Ho[bbes that] he resolves all lawfullness[,] as to gouvernement, [into] power. But I doe not know, that it hath bin yet noted, that the same process dissolves all faith and interest between man [and man],²¹⁷ and gives a theif right to the purs and to the plate, and the cutthroat to your life, becaus you are under their power. This complements the magistrate in not being guilty of murther in executing such criminalls sentenced by the law, becaus the criminall is the weaker, and once caught and condemned, must submitt. But **in foro conscientiae* he was in the right while he had the advantage of power, and would be so againe, if by the slaughter of judg, jury, and executioner he could save himself. He [Hobbes] doth not answer us, by saying[,] when laws are made, then right is fixt, and its rules, that is, the laws are to be observed. For he gives these laws force onely as the will of an irresistable power, such as must be obeyed; and then the obligation determines with the power. That is, if a man[,] by fraud, concealment, or force, falls not under the power, he is therein so far in the pure state of nature in which all things are lawfull. If he [Hobbes] says that such observance of, and submission to laws, is necessary to the subsistance of society and for t[he] [f. 60] comon good, wee are agreed and differ onely in this, that the principle our way maintaines, and his way it dissolves all laws, and that under a fals face of upholding them.²¹⁸ Now to shew I doe him no wrong, I appeal but to

²¹⁶ Regarding 'deposits', see Cicero, *On Duties*, p. 137, who included them in his discussion of the conflict between justice and self-interest posing as 'good sense'.

²¹⁷ But see Bowle, *Hobbes and his Critics*, for those (both Whig and Tory) who would have noted and agreed with RN's argument, though they might have expressed it in different terms.

²¹⁸ (UK:Lb1) Add MS 32529: f. 56 has: 'I make the power it self subject to the law of nature [i.e., to keep covenants]; but the Hobbian power is subject to no law, but

one sentence in his account of liberty and necessity,²¹⁹ which is that there is little difference between right and power irresistible;²²⁰ by which it is plain he wanted but a tolerable *salvo to have sayd[,] none at all.

It is prodigious that there should be so many fautors²²¹ as it is beleev'd have bin in our age, and the last, of this gentleman's pseudophilosophy, professing opinions of such tremendous consequence, that if once entertained by the common people, must introduce upon the publick, his state of nature, viz., intestine²²² warr, with all its train of desolation and ruin; but with this pernicious adjunct, that it's impossible peace should ever be made, and order restored. For how can any one or more trust others, and so mutually, when it is aforehand declared, that faith and trust sink with profit, or rather a fals as well as true opinion of it; whereby no man can make to himself a model of safety, but what is founded on secrecy, solitude, and force. As for treachery it will avail but little, where all faith is abandoned. [And] combinations for the same reason [—] a [f. 60v] meer *rope of sand. So the state of wolves and bears [may be] compared with that of humane kind in these circumstances. And the venom of this doctrine is much more pernicious, by being drest up under a pretension of moral philosophy; whereof the principles are *enervous, and drop upon the least stress, and so the whole fabrick comes downe in confusion.

The successors, I mean the moderne Tolanders,²²³ who take the

that of its owne will, by which all government is tyranny; a maxime the most pernicious to humane right and liberty that ever was broached.'

²¹⁹ See Hobbes, *Leviathan*, pp. 261–74.

²²⁰ Perhaps the marginal heading ('sentence') in Hobbes, *Leviathan*, p. 264: 'Liberty of the Subject consistent with the unlimited power of the Sovereign'.

²²¹ I.e., adherents.

²²² I.e., internal.

²²³ I.e., the followers of John Toland (1670–1722), author of *Christianity not Mystical...* (London, 1696), which began the controversy between the orthodox Anglicans and the deists.

name of deists,²²⁴ and the part of instructing our estated gentry, are kinder, as they are more bare fac't. For they deal plainely, and teach, not the doctrine so much as the use in deposing all aw[e] from religion and [from] the rules of honour and honesty. Their master [Hobbes] was but a synthetick philosofer,²²⁵ but they are effectuall *engineers, and work openly in companion.²²⁶ Whereby there may be some notice of their proceedings and care, (when the publick is so disposed,) to prevent the *viperous influence of them. And whither or not it be worthy the consideration of the estated party of England, who are, or should be most concerned in the laws of common peace and property, and for their sakes (were there no greater inducement) in that of religion, to curb these *acreless underminers, or whither it is not a sort of moral lethargy, or rather insanity to permitt, much more to encourage and countenance them[,] as too many have d[one,] I leav to themselves to judg.

[f. 61]

I doe not pass from this subject, without stating it with respect to warr. For in that also the Hobbian thesis, that all things then are lawfull, is utterly fals. As that which the Romans called **bellum internecinum*, and wee, killing in cold blood, o[r re]fusing quarter, is in the first begginners utterly unlawfull, becaus it is a maxime of law

²²⁴ MS has 'dheists', the 'd' being written over a 't', theist, which, according to OED, was an early term for deist. But see RN's copy of a letter from Hickes, dated 23 May 1713 (UK:Ob) MS Eng. Hist. b.2: f. 170, which suggests some distinction between the two terms, for, according to Hickes, the new Newtonian philosophy had made 'not onely Deists [of] many Arrians, but [also] Theists, and that not onely among the laity but I fear among our devines'. The Arians were adherents of doctrines, dating from the fourth century, which denied that Christ is consubstantial, or of the same essence and substance, with God; see Colligan, *The Arian Movement in England*.

²²⁵ I.e., a philosopher who proceeds *more geometrico*, according to the synthetic deductive system of Euclid. But as some of Hobbes's other writings demonstrate, he employed a pair of 'perfectly inverse' methods, analytic and synthetic, which together formed the 'ways' of his philosophy; see Kassler, *Inner Music*, p. 96, and references there. Note, however, that the terms 'synthetic' and 'analytic' were used in different ways, which depended on how philosophers understood the structure of reasoning.

²²⁶ I.e., in company, in the society of others.

in nature, not to doe *mischeif for mischeif sake. And when the evil is not to the enemy alone, but recoyls by retalliation on your owne party, and is the fruit of brutish rage and passion, and not of any reason respecting a just end, the case hath much aggravation. Soldiers of honour will not serve under such command; they owne themselves **flagrante bello* bound by the morall law [of nature], of doing as they thinck is reasonable to be done to them. All warr ought to be directed to the obteining a just peace, and then weakening the enemy, without drawing the like on ourselves, 'till he will accept just conditions, is that which ought onely to imploy the hands of soldiers in action, and the braines of the comandars in stratagem. And ever the greatest acquests, with least destruction, are [*m*]ost glorious and meritorious. But [f. 61v] what say wee then to the ordinary practis of going out of the way of the warr, to burne poor people's houses, [to] spitt children in cradles, and the like[,] of which wee have examples not very antique? For no reason perhaps but a crabbed pl[*eas*]ure some have in destruction, to flesh the soldiers²²⁷ and habituate them in cruelty, or perhaps to exhilarate a rabble, and make them bear the senceless calamitys of warr, by relations of mighty victorys, and [by] the injoyment of bonfires and illuminations, and so uphold their ignorant and declining zeal? It were well if states that need such arts and expedients would addict themselves more to peace then warr.

All these considerations weighed I thinck doe fully demonstrate to a mind sensible and undepraved, that in the most *disprejudiced state of humane nature, discharged of all laws, contracts and positive obligations, and in its worst effects[,] actuall war it self, there is a superior rule and law [of nature], which every particular man knows and ought to regulate his actions by; and are, in a word, decisive in the controversie against Mr. Hobbs, and his more impudent followers.

[f. 62]

5. Judicature and laws differr in this; the one is the power, and the other is the rule of judging. And as judicature is pryor in nature, so it may subsist without positive law. For that is but an emanation of

²²⁷ MS, which is faded here, may have 'soldiery'.

the other, when it declares by what measures men shall be judged in certein cases. Of these two in order,²²⁸ and 1., of judicature.

It is not possible that any man or number of men in society should in a strick't sence be free. For if no other power be in possession, that of the *company is allwais at hand to injoyne and compell the rest. Therefore freedome, as authors ordinarily observe, is an ambiguous word, with which the comon people are cheated; they thincking in the phrase of the Psalmodian – who shall us controul?²²⁹ or as it is say'd of Israel, when there was no king, that every man did what was good in his owne eys.²³⁰ Which chimerick freedome of theirs is reall slavery, by being subject to every upstart incroaching party, that masters them. But just and true freedom consists in a security of being protected from the inordinate insults of others[,] equalls as well as superiors[,] by some just and irresistable power.²³¹ I say just and irresistable, but where were any such? I grant[,] among men, never. [f. 62v] But all powers are more or less inordinate; and consequently the subjects have not an even steddy protection, and many hard and *injust cases happen. But yet in the main, passing by casuall irregularitys, like to difficultys in comon road-travelling[,] troublesome, but not insuperable. Those that live under settled powers and declared laws have a comon protection, and such people onely can be called free.²³² But woe is to them that take occasion from humane failings incident to potentates, (rather more

²²⁸ For judicature, see ff. 62–67; for law, see *infra* ff. 84–111v.

²²⁹ *who shall us controul?*: see Psalm xii.4, 'who is lord over us', although RN's paraphrase is closer to the version in *The Whole Booke of Psalmes*, 'what lord shall us control?'.
²³⁰ *when there was no king ... in his own eyes*: see Judges xvii.6, 'In those days there was no king in Israel, but every man did that which was right in his own eyes.'

²³¹ Perhaps RN's version of *Salus populi suprema lex* [the safety of the people is the supreme law], which judges 'ought above all, to remember', according to Bacon, 'Of Judicature', *The Essays*, pp. 170–74, p. 174.

²³² Cf. Locke, *Two Treatises*, p. 182: 'Freedom of Men, under Government, is, to have a standing Rule to live by, common to every one of that Society, and made by the Legislative Power erected in it.'

then unto private persons,) to fly in their faces and weaken or depose them, and consequently the basis of their property and safety. And let those who know the cost of experiments of this kind, judg what reason the reflection bears.

If wee will consider the genesis and progress of powers[,] wee may find these [two] stepps.²³³ 1. as I sayd[,]²³⁴ the body of a *loos people is the gouvernement, acting tumultuously by votes; which[,] while that body is in distress and [in] fear or wors, is comonly disposed to order affaires according to their capacity and opinion justly, and for the comon good of the whole. And small *discretion serves to engage the whole to an union, by assent to the generall voice, without which they must seperate, or wors[,] fight and be destroyed. [f. 63] During the reigne of this *sincerity, tho none be by appointment above another, yet there will ever appear fellows more foreward, *pragmatick, and talkative then the rest, who will be officiating as prolocutors or orators in the assembly[,] comending themselves and blaming others[,] and be hearkened to by more or fewer, as it happens they have credit.

And [2.] at length the bustling and stirring for this province gives occasion to the assembly to appoint such as shall be their ministers. And so *magistracys enter by fair election, untill ambition prompts some of corrupt natures, to make interest by corrupt means, to be placed in such posts of authority; and by degrees and a succession of frauds artfully managed, [they] grow too strong for their makers, and set up for independant authority. Which *humour[,] working in divers at the same time, and a counter working of the comunity or such as smell the evil, makes turmoil and warrs. So perhaps the whole body, without being thus imposed on, may be equally devided; or divers partys thinck that in some respect or other they are the stronger[,] whither with or without truth or reason matters not, if they are of that opinion. And [if] neither hath any disposition to admitt expedients, as *lotts, [f. 63v] *suspensions

²³³ The steps are: (1) polity by nature, and (2) by institution, i.e., what Baker, *An Introduction*, pp. 8–10, described as from communal to personal authority; see *infra* ff. 62v–65v. MS has no enumerated step 2, but see f. 63.

²³⁴ See *supra* f. 52.

or the like, but incline to rigor and extremity, then the like consequences of warrs and confusion may happen. And so comonly ends all the purity and integrity of the naturall state of humane society, or such as ever hath bin neerest to it. And from thenceforth positive law, and powers declared in certain persons[,] as magistrates supream and subordinate[,] sprout forth and setle, in manner as wee see in most knowne nations and ages of the world.

It is very remarkable but also most true, that when the order of a society is gone off from its naturall *sincerity, or that [order] not being (as seldome is,) pure[,] from such ways of proceeding as they use neerest to it, and fall into a cours of *magistracy and positive laws, every relaps back towards that *republican state is so farr from mending the condition of a people, that it ever makes it wors, and for the most part throws them under absolute monarchy. One need not goe farther then some very neer and familiar examples to prove this.²³⁵ But the reasons being so manifest I cannot pass them by, as: 1. It weakens the power in [f. 64] possession, whereby it becomes less able to protect the good and quiet people, that have no other security. And the removall of such power is like dismantling the fold, and letting the wolves in among the sheep, that is, the cunning knaves among the not-cunning honest persons. 2. Such chang[e] of government cannot be unanimous, but it must enter with strife and force. I will admitt that [if] the buissness is transacted polemically, without armes, the tumults and devisions have such dismall and tempestuous prospect with orderly people, that they are ready to submitt to any thing for a *crisis, and to setle some government that shall maintaine it self and them; and rather then faile, they willingly take upon them the arbitrary yoke, as the lesser evil. It is not knowne that arbitrary power ever entered in the world but thro dissentions of a people, raised or occasioned by specious pretenders to reformation of abuses and *republican innovations. But these things rarely or

²³⁵ I.e., 1640–60, the period of the civil war, the interregnum years and the restoration of the monarchy.

never pass without a force of armes to back them, and that force, as in the fable of the hors,²³⁶ is assuredly master.

The 3d and last reason is, that the [f. 64v] naturall state of *policy, is absolutely impracticable without a sort of comon integrity or generall publick spirit and self-denyall[,]²³⁷ as never is found but among people of very low condition, either of education, fortune, or subjection. For it is the nature of mankind, being oppres't, whither by comon wants and calamitys, or by power, to desire onely what is very reasonable and just. When they have gained that point, and thinck themselves safe, then they desire preferment, and equality is farthest out of their thoughts; and so [they] rest not till they are uppermost, nor while they conceiv any power on earth can oppose their wills. That is, they will be satisfied, when the hinder wheels of the charriot overtake the forewheels. This is found to be true from the universall history of mankind, in all stations of life. And wee must conclude, that after a people are at eas, or have lived in security, under regular government and laws, they are no longer satisfied with equallity, and all aim at superiority either in wealth, power or other engin of pride. So that in setled states, there is ordinarily more clamour and stirr [f. 65] for want of preferment, then for want of justice or for any publick abuses; and when mismanagements are complained of, it is not to mend but to chang[e] the hands. Nor are the times ever good but in the voice of them that have the administration of the publick honour and wealth. And it is farther very strang[e] but true, that for the most part the buisy troublers of a setled state are persons of no value for *estates or honesty, but a sort

²³⁶ See also RN, *Examen*, p. 352. As told by Aristotle, *Rhetoric*, II, xx.10–20, the fable concerned a horse that had a field to himself until a stag came and spoiled his pasturage. Wishing to revenge himself on the stag, the horse asked for assistance from a man, who agreed to help if the horse allowed the man to bridle him and get on his back. When the horse said 'yes', the man mounted; and instead of getting his revenge on the stag, the horse found himself slave of the man. The moral lesson is: take care lest your desire for revenge on your enemies meets the same fate as the horse—enslavement.

²³⁷ For RN's lament regarding the dissociation of this traditional moral value from politics, see *supra* Chapter 1 sect. 1.2.

of desperate gamesters, as it were, in the publick that can have no end, but to be whipsters themselves.

Now this being the condition of most, if not all settled states, if one should with authority say to them, in their owne sence, be free, and so discharg all laws and gouvernement in force, and remitt them to order among themselves as they should see best for their comon utility, and this done while no dangers are impending from abroad to disturb their proceeding, an harsher judgment could not be sent from heaven for punishment of the sinns of Sodom.²³⁸ I need not paint the confusions, quarrells, robberyys, murders, treacherys and *mischeifs of all kinds upon earth that this people would be afflicted with, untill some one party getts absolute and uncontrou-[f. 65v]lable gouvernement over them. Therefore the voices of the republicans are but syren songs. For without comon sincerity and publik spirit, every approach to naturall politie is pernicious. And if wee may look on all compositions of gouvernement as have bin in the world between the naturall and politicall state of men, vnder the corresponding extreames, viz., generall assemblys and absolute monarchys in places where either may be[,] and compare them together, as in viewing a mixture of divers colours not distinguishable[,] wee perceiv some one colour predominant.²³⁹ So wee may discerne, that absolute powers or monarchys are the colour of a corrupt people, and the use of generall assemblys, that of one pure and sincere; and so in all intermediate degrees or mixtures.

Therefore according to the great or litle esteem wee have of the comunity in point of humility, brotherly love, vertue and morralls, so lett us in polity value the settled gouvernement. I know that mending the world is comonly much studyed by strict and severe as well as the most prudent and reserved of the people, (I mean when it is intended with most sincerity,) such as most pine at temporall losses

²³⁸ I.e., *sins of Sodom*: see Genesis xix.1–28.

²³⁹ Cf. Hooke, *Micrographia*, p. 78: 'the eye being unable, by reason of their smalness, to distinguish the peculiarly colour'd particles, ... receives them as one intire *compositum*'.

and *inconveniences. Therefore I must needs say that turnpenny²⁴⁰ with governements is the folly of wise men. For if ever the proverb were true, it is so in governements, there seldome comes a better.²⁴¹ And I am not to be opposed by another proverb, new broomes sweep clean,²⁴² for that concurs with the former, for such are never contented till they sweep the publick wealth clean awa[y.]
[f. 66]

This discussing against the *republican humor of seeking reformation by perpetuall chang[e,] that often possesseth the wise and deludes the weak, doth not engage me in the caus of absolute power, as if I advocated for it. I could wish [that] there were no such thing in nature as absolute power of any man or number over the rest, and that the world had such morall perfection as not to need it. But it is incident to that great guift of heaven to men, free will, that it should appear to us distinguish't in the uses and abuses of it. And men are not trusted to act with like freedome, as they will, or be punish't so as may dispose their will to better porpose, then as many use it. And as the less evil, it is permitted to some to will and act without contradiction, upon trust that they coerce the devious wills of others. This priveledg is lodged in gouvernement, or, more explicitly, in that [power] which is called *legislative,²⁴³ whose will is a law to others. And however some expedients are found to temper power, by changing hands, and so create an awe and thereby in some measure prevent exorbitances, yet wee must allow that somewhere or other, there is and must be lodged an *incoersible or absolute power. And wherever it is, being propence towards abuse, especially when in one or a few and hereditary, the people are apt both to envy and to fear it. Either of which passion in [f. 66v] the generality, as wee have more

²⁴⁰ *turnpenny* (to *tourne the penny*), i.e. to cause change: see Heywood, *The Proverbs*, p. 75.

²⁴¹ *there seldom comes a better*: see Heywood, *The Proverbs*, pp. 8, 144. See also RN, *Examen*, pp. 339, 352; RN, *Life/FN*, p. 26.

²⁴² *new broomes sweep clean*: see Heywood, *The Proverbs*, pp. 44, 137; see also *infra* f. 107v and RN, *Life/FN*, p. 451.

²⁴³ For RN, *Examen*, p. 333, 'the Crown, with the States of Parliament', i.e., the mixed constitution.

than once found in England, is enough to o're turne a well settled peacefull state.

Therefore I am most confirmed in opinion, [that] nothing is so wholesome for the politique body as their declared and knowne laws, especially such as concerne power and gouvernement. Let those stand, **et ruat cœlum*, that is, *ut non ruat celum*, if the ruin of the people and throwing all order sacred and profane downe into a caos of confusion may be accounted so, as seldome fails to happen when those given to chang[e] are (for the sins of the people,) permitted to have their will. But without distinguishing whither the power be absolute here or there, in the whole or in part, I am sure, that no terrene²⁴⁴ majesty can absolve it from obeying naturall justice, which requires the observance of positive laws, after they are enacted, and where they are found unfit, to alter them justly and regularly. So that altho positive law be but the will of men in power, that will ought to follow naturall equity, which every experienced person's senses tell him is his duty; and²⁴⁵ no pervers willfullness, tho not outwardly resistable, can discharge it.

The Hobbian doctrine is a fallacy in not distinguishing between law and equity; that is, force and justice. For law truely speaking is the will of power, and equity [is] naturall justice, [f. 67] which is the eternall and immutable rule by which the will of power is, or ought to be, guided. Otherwise all gouvernement is by institution tyranny, and encouraged to all selfish and *injust and arbitrary proceedings. Power is the fountaine of law, but not of justice. Therefore the injunctions of power in all things not contrary to justice, by being law, enter the pale of justice, and ought to be observed; but if contrary to direct naturall equity[, those injunctions] are void, as may be farther touched anon.²⁴⁶ Therefore as it is the duty of every power to injoyne what is just[,] so it is for every private person to act justly, whither the laws constraine it or not. For there is no difference of obligation at all between the duty of a sovereigne power with respect

²⁴⁴ I.e., temporal, secular.

²⁴⁵ MS has 'and that'.

²⁴⁶ See ff. 99v–100v.

to government, and the duty of a private person in his owne dealing; becaus law and politie apart[,] every man is supream governour of all his owne actions, as the poet's hero in this respect sayd truely enough, – for I am king of me.²⁴⁷ All which makes it plaine, that those who with the Hobbyans resolve all right into force, supplant all comon honesty. I know there are some, like the fool in the Psalme concerning his no-faith of a deity,²⁴⁸ that say in their hearts, vnprofitable honesty is meer folly;²⁴⁹ but they will not in controversie owne it, and that suffiseth to confute them.²⁵⁰
[f. 84]²⁵¹

[11.] Concerning laws

The next thing to judicature is laws, which latter I take to be an emanation of the former, as light from the sun. I do not subtilize here of power as it is actually distributed in severall *states, where magistrates have provinces assigned, some to make laws, others to declare laws, as the *policy of states require; but by judicature I mean only power to order, determine and execute, however it is disposed. Laws may grow up, either by positive institution, or by

²⁴⁷ *for I am king of me*: see Dryden, *The Conquest of Grenada* (1672), Pt. I, Act I Sc. I; see Macdonald, *John Dryden*, pp. 107–109. In this rhymed heroic tragedy, the poet's hero, Almanzor, speaks the following lines to his captor, the last king of Grenada (Mohomet Boabdelin), who is trying to make him submit: 'Obeyed as sovereign by thy subjects be./ But know that I alone am king of me./ I am as free as Nature first made man,/ Ere the base laws of servitude began,/ When wild in woods the noble savage ran.'

²⁴⁸ *fool ... deity*: see Psalm xiv.1, 'The fool hath said in his heart, There is no God.'

²⁴⁹ RN alludes here to a contentious passage in Hobbes, *Leviathan*, pp. 203–204, regarding the fool who, in denying the existence of God, thinks he can evade the force of his promise to obey the sovereign. According to the interpretation of Schneewind, *The Invention of Autonomy*, p. 97, since the problem the fool poses is the absence of any appeal to punishments after death, Hobbes implies that considerations of a secular sort will adequately convince the fool to comply.

²⁵⁰ Here follows ff. 67v–83v (unedited sects. 9 and 10), concerning which see *supra* Introduction to the Edition: Description of the Manuscript.

²⁵¹ Folios 84–88v are in the hand of RN's son, MN (2).

tacite usage, and so fall into custom. The former hath been the practice more of refined, than rude people. In Greece, the land of philosophers, there were notable systemes of laws invented by them, to fitt the needs of severall citys, and, being enacted, were the declared law; and so with the Romans, after they found by experience the want of laws. And however rude the beginnings of a state, as England for instance was, in process of time they came to consider *mischiefs, and made laws for remedying them, which in our days are called *statutes. But with rude people I take law naturally at first to grow out of the use of judicature, taking the form of custom.

Such has been the method of the *Gothick nations, especially England, which (occasionall statutes apart) knows no law but custome. For in the early courts of the *vicinage, as often as causes were decided, tho' the people had in their minds little or no declared law, but only some notion of common equity, or as I have styled it[,] the law of nature,²⁵² positive law grew up and became as law declared in the name. And all parallell laws²⁵³ [f. 84v] [became] cases by vertue of the *president or custom. There is the greatest reason that cases once adjudged, if not contrary to natural equity[,] should be law. For 1. after the cause is once maturely deliberated, and the reasons weighed, it is superfluous on every like occasion to doe the same over again. For the judgment of wise and good men to the generallity of mankind, of whom all do not pretend to subtile thincking, is equivalent to pure reason. 2. It would be a great scandall to have the law in one case for the plaintiff, and in another just like it, for the defendant. Therefore it is better by sticking to president to lett some *inconveniencies pass, rather than by contradictory judgments have the law bifronted. 3. In most cases it is almost indifferent what law is, provided it be certain and known. And that can never be if it be drawn from opinion, and not from president; for men's opinions in nice matters will eternally vary, and not without colour, every way, enough to hinder their unanimity. Therefore it sufficeth that the

²⁵² See *supra* f. 51 (no. 6).

²⁵³ MS does not pick up the catchword ('laws') at f. 84v.

invocation of law be from reason, or well weighed opinion, grounded on the laws of nature, that is, the common utility of the people, and adapted to their circumstances then. But afterwards, this nice criterium of law shou'd give way to that more gross and sensible, called president, as not being so *obnoxious to uncertainty and dispute.

To give some instances of this *indifference of laws, observe that of succession to lands and goods.²⁵⁴ It is all one to the commonwealth whither land goeth from the son to his father or to his brother. And if it were **res integra*, what a world of argument might [f. 85] there be on either side, and how difficult to determine exactly from reason, whether father or son should carry it. But it seems it is already determined against²⁵⁵ the father,²⁵⁶ and the reason given is, that land is heavy and will not ascend from son to father. That reason might have been spared, for it is enough, that the point is once decided, which is reason inexpugnable that an harmless law, in cases that must be determined, shou'd continue for ever; and such as do not like it, may settle their estates otherwise as they please. So for goods, whither the heir or the executors shall have them. It falls out, that from ancient bigotry it comes to be decided, that executors shall have the property of all goods, without account to anyone, to the end they may be free thereby to dispose of them for the good of the testator's soul. And however of late this reason hath failed, yet the law is so at this day, and for the greatest of reasons, [viz.,] the having been once so determined; and such as wou'd contravene it, may by their will²⁵⁷ dispose as they please. The case of administrators was the same, only holy church put in to have the execution of estates **pro salute animæ* when no executor was named, and actually had it without account,

²⁵⁴ I.e., real (immoveable) property and tangible (moveable) chattels such as heirlooms. On death, the latter went to the executors and administrators, and questions about testate and intestate succession were administered by the church courts; see Baker, *An Introduction*, especially pp. 386–7.

²⁵⁵ MS has 'for'.

²⁵⁶ MS has in right-hand margin: '*quære* brother'.

²⁵⁷ I.e., legal declaration of a person's intention which he wills to be performed after his death.

untill the *legislative thought fitt to regulate that power, and let the relations into the account. In like manner for punishments,²⁵⁸ whither one way or other, more or less, to be inflicted on certain transgressions, it is not very materiall. But [it is] most necessary that it should be determined and certain [f. 85v] what and how, because it is a security of the people from arbitrary dealings and the malice of powers. Therefore when it is once known that certain offences have been punish't in any particular manner, whither in abstract reason it may be thought too much or too litle, yet there is the greatest of legall reasons that it shou'd continue ever the same, untill altered regularly by publick authority[,] whose acts being certain and known amount to the same thing.

But to look a little more stricktly into the nature of this customary law. Whatever authority is ascribed to the *president of former resolutions, they are not in a strickt sense law, as the very text of a legislative act is, but only evidence of law,²⁵⁹ so that upon manifest reason they may be laid aside and contrary judgment given. For if the consequences are very *mischievous, it may be supposed, they passed by error, inadvertance, or some *iniquity reigning in that age, tho not appearing in after times. And by like occasions it may happen that president is against president opposite **ex diametro*; or there may be some, that diminish the authority of, if not directly contradict others. Such as learned opinions, historicall reflections, and the like, that may depreciate tho' not overturn the authority of presidents. It may therefore be said²⁶⁰ that this customary law is lyable to vast *inconveniences from these accidentall infirmitys of president, whereby after all, it will remain incertain what the law is. And insincere powers [will] have a great advantage of [f. 86] laying hold on the sides which serves their partiall designs; and accordingly when any *turn is to be served, it is but hunting for some

²⁵⁸ See *infra* ff. 88–88v.

²⁵⁹ I.e., judicial opinions are evidence as to what the law was commonly held to be. But by the end of the sixteenth century, they also had become a distinct source of the law; see Baker, *An Introduction*, pp. 198–9.

²⁶⁰ This is the first of two objections that RN will answer in ff. 85v–88v; for the second objection, see *infra* f. 86v.

former transaction[,] such as may be held forth as resembling the present business and called a *president, which found, the work is done. And such pretended president may in truth be some detestable and most *facinorous action. That such abuses are not impossible, let the parricide of King Charles the Martyr²⁶¹ be an instance, which proceeding since hath been, and ever will be alledged as a worthy president by wretches of the like feather, who are never indisposed, if it were in their power, to react the like execrable villanys. Therefore, as I said,²⁶² law founded on tradition may happen in bad times and by bad men be abused and made a countenance to introduce tyranny or anarchy.

To which it may [be] answered, that all human conditions are capable of being corrupted. What constitution was ever made, that was not at one time or other abused? Nay, to say truth, what law ever was made, that maintained always its originall purity, and was not at some time or other made a snare to the innocent as well as correction to the guilty? The subtilest contrived laws that ever were made, nay, the extract of laws, those of the *twelve tables[,] fell out soon to be so unfitt for the [Roman] republick, that they were *obsoleted and laid aside, which could not have been, if there was not very ill use made of them. And that introduced and countenanced an arbitrary course of the Roman prætors, of making and publishing their [f. 86v] own laws by which, during their prætorship, they intended to judge; as is well known from the story of the Roman law touching the **edicta prætorum*.²⁶³ Whatever law is, it is dead without judges, and the *insincerity of them, (when it happens, as all is not gold that

²⁶¹ Charles I (1600–1649), king of Great Britain and Ireland. Martyrologies began to pour from the press after his execution and the posthumous publication of his political apology and spiritual autobiography, *Eikon Basilike*, of which two copies are listed in RN Books (1).

²⁶² I.e., in stating the first objection *supra* f. 85v.

²⁶³ When the prætor or chief legal magistrate took office, he published an edict, setting out the principles on which he intended to administer justice. His successor would then take over the edict, making whatever changes and additions were necessary, so that a body of law grew up supporting or complementing the code called the twelve tables. I have been unable to determine the specific ‘story’ to which RN refers.

glisters²⁶⁴) turns equity into *iniquity. In which infirmity the customary law is not more *obnoxious than the positive [law]. But on the contrary, one thing proves it more safe to property than the other, which is, that custom goeth along and adapts it self to times and the *volvent changes of human dealing, but positive law stands at a stay, and so must of necessity be left behind; as happened in Rome, and arbitrary prætorian law comes in the room of it, justified by an apparent defect in the other.

Having thus taken notice of change, I shall further add, that it is made an objection to the common law, founded, as wee have observed[,]²⁶⁵ on tradition, or memory of past proceedings, that it is subject to change. Whereby, as they say, the pretence of custom or *president is an illusion, and the law resolves it self into the voice of the bench, who may, and some say do[,] make new law *as fast as hopps; therefore custom is not in reality, but in pretension only, the essence of the common law. I have noted [above] that this which may be called change is in truth the advantage and perfection of the common law, that it is accommodated to the flowing alterations of affairs, which no positive law can be. But to answer the objection. It is a false consequence to alledge that such changes as happen [f. 87] in the course of law do at all impeach the verity of its being founded in custom, for the change doth not ly in a contradiction unto, but [in] dropping the more antique courses. As for instance, *villanage is as much the law as ever it was; and if a man in a *court of record recognizeth himself [as] another's *villain regardant to his Mannor of A, he is by law at this day a *villain alienable, and all the goods of such villain are the goods of his owner. So for *tryall by battell²⁶⁶

²⁶⁴ *all is not gold that glisters*: see Heywood, *The Proverbs*, p. 22, a variant of which (all that glisters is not gold) was made famous by Shakespeare, *The Merchant of Venice*, Act II, Sc. 7, line 65. For a twelfth-century Latin version, see Moss, *Printed Commonplace-Books*, pp. 26, 288.

²⁶⁵ See *supra* f. 86.

²⁶⁶ In the fourteenth century this method of proof became 'virtually' obsolete in criminal cases, and this obsolescence 'was directly related to the development of an alternative and more enduring method' of trial by jury; see Baker, *An Introduction*, pp. 72–4, 233, 507.

and divers other heads of law that are not changed being now still but omitted as useless in this age which serves it self of new devices and applications of customs, which heretofore signified little, but now are all in all. Wittness in course of trying all titles by *ejectment, and laying aside the use of *reall actions, and all the learning that belonged to them, which now is become historicall, rather than practicall law learning.²⁶⁷ So [likewise] the originall judicature of the *vicinage[,] or whole assembly of the court, is dwindled into a formall twelve, as the use at this day is, founded (as by egregious *tokens appears) on the former, but **quantum mutatus ab illo*? Nay, I will admitt that the modern law shall in some instances directly contradict the ancient and [that] there be in the elder law books demonstration of it. And yet the customary rule shall remain sacred and *intemerated, because the change is presumed to have been regularly made, that is, by legislative authority[,] altho the act doth not appear. I heard once a noble chief of the law²⁶⁸ say, to support a long uninterrupted possession, he would, if no other way would do, presume a settlement by act of parliament, and that it was lost.

Here is no [f. 87v] breach upon the system of the law, as when by change of times and manners, judges are forc't to make rather than declare law. Which is the case when all the law is positive, and not referred to [judicial] *construction and usage. And I dare say, no active republick in the world can stand long upon an inviolable declared law. That which is neerest to such a state is that of the Turkish law, which with them is like the Gospell with us, unalterable, and yet (pretended) a rule of all emergent cases and with all nations for ever. But what is that but an arbitrary comment upon nonsense? such as the *Alcoran is.²⁶⁹ From whence the doctors have

²⁶⁷ By the fifteenth century the term 'villanage' gave way to the socially more neutral term 'copyhold', and it was this change in attitude that led to the new sixteenth-century remedy called 'ejectment'. This innovation then triumphed over the old real actions; see Baker, *An Introduction*, pp. 44, 307–8.

²⁶⁸ MS has in left-hand margin opposite: 'Hales', i.e., the judge Matthew Hale (1609–76), kt. (1661); see also *infra* ff. 97v–98, where RN repeats what he heard.

²⁶⁹ RN Books (1) lists a London edition published in 1649. For the Turkish judicial system, see further *infra* f. 95v. For a comparison between the Turkish and English

extracted what for law they please, and so do from time to time, modelling their decrees much after the rate of our customary law in *Westminster Hall, upon old opinions and usages, vouched as any thing might be, upon the textuall jargon of the Alcoran. Mr Molesworth gives [in his book,] *An Account of Denmark*,²⁷⁰ that the law of that country is so declared in writing, that every clown is judge of his own case.²⁷¹ I doubt in this, [as] his relation savours of Xenophon's prince;²⁷² for either the clowns are extraordinary learned, or the judges are extraordinary clowns, or else their negotiations extend no farther than their plow-tail. I grant such constitution, if possible[,] would be happy, but we must look for it not in Denmark but [in] Utopia.

The civilians²⁷³ have a gross if not impudent excuse for (if I may so speak) breaking their (idoll) law to do right, which they call, acting **ex autoritate*, or *nobile officium iudicis*. But it is so much better and safer to referr the law to [f. 88] custom for adapting it to the perpetuall occasions of the people, that all or most nations under the dispensation of the civil law are forc't likewise to postpone it to municipall customs, as in France it self if we may believe

systems, see RN, 'Memorialls of the life and actions of Sir Dudley North Knight....' (UK:Lbl) Add MS 32512: ff. 1–211v (1709).

²⁷⁰ Robert Molesworth (1656–1725), 1st viscount in the Irish peerage (1716) and envoy to Denmark (1689–92), published anonymously *An Account of Denmark as it was in the Year 1692* (London, 1694, several edns.), in which he offered a republican critique of the Danish monarchy.

²⁷¹ (UK:Lbl) Add MS 32529: f. 101v has: 'It is say'd of Denmark, the letter of the law is so plaine that any country man can tell what the law is in his own case. And a judg that determines, and hath not the letter of the law to justifie him, is severely punisht. I should be glad if it were so here, but in the southerne climes, where is more buissness men [who are] more active and subtile, I feare that convenience of law is not to be had, not in England for certein, where the law is taken from vsages.'

²⁷² Xenophon (c.430–c.354 BCE), Greek general and historian, whose political romance, *Cyropædia*, was based on the history of Cyrus the younger (424?–401 BCE) Persian prince and satrap. For this work and its influence, see Ferguson, *Utopias*, pp. 57–60.

²⁷³ I.e., those who profess or practise the Roman civil law.

Hottoman.²⁷⁴ But yet this customary scheme of law is not so ductile, and at the mercy of judicall *construction, as it may seem to be. For in things of common use and practice, it becomes, from the reiterated *presidents, equivalent to a positive declared law; and the judges can with as little effronterie contradict a *statute as that. And for this reason, the common law often falls under like *inconveniences as if it were declared **in scriptis*, as statutes are, and by change of times becomes very *inconvenient. For this reason, the *legislative exerts it self, interposing expedients by statutes, as occasion is; which course preserves the authority of the law as not alterable, but by the supream power.

The course of the common law is to inflict punishments on common misdemeanours, both against statutes prohibitory and without penalty, as against common law, **secundum quantitatem delicti* and *qualitatem personæ*, that is, by fine, imprisonment or corporall mulcts, which is a course adapt to all the Protean cases that can happen. But crimes of quality, that have titles, as treason, murther, felony, and the like, have stated inflictions as every one knows. But yet, statutes usually inflict certain penaltys as well upon new made offences [f. 88v] that are but **mala prohibita*, as also on offences that are **mala in se* and also punishable by the common law, altho there is no necessity of either, for reason noted.²⁷⁵ And I have heard wise men say,²⁷⁶ especiall penaltys never did good. For it

²⁷⁴ I.e., François Hotman (1524–90), author of *Antitribonian, ou, Discours d'un grand et renommé iurisconsulte de nostre temps sur l'estude des loix...* (ed. by Pierre Nevelet, Paris, 1603), republished in Latin as *Anti-Tribonianus, sive discursus in quo jurisprudentiæ Tribonoaneæ sterilitas et legum patriarum excellentia exhibitur* (Bruxellis, 1681). In this 'anti-Tribonian critique', Hotman claimed that 'the influence of Roman law was irrelevant, if not pernicious, and more generally that law, like language, should be in agreement with the character and "humours" of a people'; see Kelley, 'Civil Science', p. 71. For Tribonianus, see *infra* f. 91v.

²⁷⁵ See *supra* f. 88.

²⁷⁶ Possibly (from the context following), the judges in a case of constitutional importance, *Barnardiston v. Soame*, which began as an action for penalties. On 13 November 1674 the case was heard before Hale, chief justice of the King's Bench, who found for the plaintiff, Samuel Barnardiston. But in 1675, shortly after FN was appointed chief justice of the Common Pleas, the proceedings, by a writ of

is impossible but the same offence may be more or less aggravated, and what rule can be more adequate to all, than the course of the common law, which is a plaister that fitts all wounds. And great pity it is that so good a constitution[,] for some temporary and amendable abuses, should be disparaged so as must happen upon prescribed penaltys, which are too much for some cases and too litle for others. If judges abuse their authority, it is in vain to attempt mending the matter by tying up their hands, whereby instead of not doing wrong, they cannot do right. A shorter way were to question them for the abuse, which will make their successors more carefull, and so keep the keepers.²⁷⁷ Therefore I conclude the scheme of the common law, grounded on ancient customs and traditions, incomparably is [the] best extant in the world.

[f. 89]

[12.] Laws are historicall

The foundations of law may be constant and firme, and yet every age in the use of them shall affect a peculiar fashion; just as is done in the use of speech, as if camelion-like both took their colours from the age, as that creature doth from its seat. This doth not impeach laws, but humane practices, to which they must be applyed, of incerteinty and chang[e]. As for instance[,] possessions of lands are now recovered by a newfangled proceeding, called *ejectments, which not very long since, was done altogether by *assises and heretofore by *writts of right. And both were then and are yet legall remedys, tho

error, were transferred to the Exchequer Chamber and heard by eight judges. By the verdict of six of the judges (including FN), the result was reversed. In 1689 (FN then being deceased), the plaintiff, after renewing his complaint in the House of Commons, carried the action into the House of Lords, where the judgment of the Exchequer Chamber was affirmed. In the same year RN caused to be printed FN's argument (see *supra* note to f. 9), which also includes remarks on law as a 'remedy' or 'plaister'. For details, see RN, *Life/FN*, pp. 138–52, especially p. 152; see also RN, *Notes of Me*, pp. 211–12, who states that he had 'a share in the conversation, and solliciting part' of this case.

²⁷⁷ *keep the keepers*: see f. 67v (unedited sect. 9), where RN begins his consideration of the 'frailetyes of soveraigne powers' by raising the question, *Quis custodiat ipsos custodes?*: (Lat., Juvenal) Who shall guard the guardians?

not in use together; and upon the introduction of the latter, there have bin some accomodations found out to facilitate the process, never heard of before.²⁷⁸ Some heads or titles of the law are quite worne out, and remaine (if at all) onely among *formalists, to litle or no porpose, or perhaps to all porpose, by inhancing law charges, as *essoines,²⁷⁹ and others well observed in Hales' learned Preface to Roll's *Abridgment*.²⁸⁰ This is that which makes the old *statutes [f. 89v] as well as the old books of the law seem obsolete, and, by a supine negligence of students, be almost wholly slighted. For those refine upon points that were the practis in those ages, and are not now in practis att all, and so are look't on onely as dry history of past and useless law.

My Lord Cook,²⁸¹ a solemne comentator on our old *statutes, ever aimes to tell how the law stood before the statute [was] made,

²⁷⁸ For some of the innovations, see Baker, *An Introduction*, pp. 422–3.

²⁷⁹ MS has several dashes after this word and before the words 'and others'; but these gaps may be filled from RN, *A Discourse on the Study of the Laws*, p. 35, where he writes that, of the proceedings in the court of Common Pleas, 'Essoins, Defaults, Appearances, Returns, &c. [are] very fit for a lawyer to know'.

²⁸⁰ Henry Rolle (1589?–1656) left law reports and abridgments that were published after his death, including *Un abridgment des plusieurs cases et resolutions del common ley* (2 vols., London, 1668), edited anonymously by Rolle's friend, Hale, who also, though anonymously, contributed 'The Publisher's Preface Directed to the Young Students of the Common-Law'. That 'Preface' may have supplied some of RN's examples of 'mutations' in the law due to the 'particular defects and mutabilities of time and experience'. Indeed, according to RN, *Notes of Me*, p. 170, and RN, *A Discourse on the Study of the Laws*, p. 24, Hale's 'Preface' 'is most worth reading, because it gives an history of the changes of the law', so that 'if the obsolete law be any discouragement, I would as a cure refer the student to read the *Preface to Rolles' Grand Abridgment*'. For a summary of, and commentary on law change as treated in Hale's 'Preface', see Holdsworth, *A History of English Law*, vol. 6, pp. 624–7.

²⁸¹ The judge and law writer, Edward Coke (1552–1634), kt. (1603), was commonly called Lord Coke, Cook or Cooke. The four parts of his *Institutes of the Laws of England* (pt. 1, 1628, pt. 2, 1642, pts. 3 and 4 unfinished, 1644) covers matter relating to property, statutes, crimes and courts and in part 1 reproduces, with a commentary, the treatise on tenures, written in law French by Thomas Littleton. Usually referred to as 'Coke upon Littleton', this text was the principal authority on English property law. FN made an abridgment of it that is still preserved (US:Dlc) KD 833.G85/1685. According to RN, *A Discourse on the*

and what alterations are introduced by it.²⁸² This argues that a knowledg of the ancients practis of the law is needfull for the right understanding of our statute book,²⁸³ which being a declared text of law must (as supposed) without some parlimentary repeal continue in force for ever. And the same holds for the knowledg of the comon law one age under another, because that of any age is not clearly understood without connecting it with the former, so as the changes with the reasons may appear. This carrys to study of the law [when connected] up with a furious speed into antiquity[,] [f. 90] as led by a clue, which onely can resolve the meandrous paths of this labyrinth of comon law. These seeming changes of law are not defects of the institution, but consequences of humane frailty and mutability; and, for that reason, the more buisy ages and nations are accordingly the more sensible of it [i.e., law change].

I doe not much heed what some foreiners pretend of theirs, as the Danes, Hamburgers, etc.; [for] small and silent states may hold their customes with less alteration then others, that are more agitated

Study of the Laws, p. 11, Coke's use of the word 'Comment, as supposing it carries explanation ... hath deceived many students to take it along with the text of Littleton; but to very bad purpose, for it disturbs and hinders the attention to the text of the book, which is that principally to be regarded and remembered'. Although admitting that Coke's commentary on Littleton contained 'very much useful learning', RN, *ibid.*, pp. 21–2, places a higher value on Coke's '*Comments* (these truly so) *upon Magna Charta*, and the old statutes'. RN's judgment has been reaffirmed by a number of later writers, including Sheppard in Coke, *Selected Writings*, vol. 2, p. 745, who described Coke's commentary on Littleton as merely a 'glossator's project', whereas his commentary on Magna Carta in part 2 of the *Institutes* was to become 'the essential understanding of its meaning for the next three hundred years', because he 'read the terms as they were written, which were in more general words', and he found in them 'a much more universal set of protections'.

²⁸² See Coke, *Selected Writings*, vol. 2, pp. 831–2, 951, 1120, and particularly p. 752: 'We ... have been inforced almost of necessity to cite our ancient Authors ... and many Records, never before published in print, to the end the prudent Reader may discern what the Common Law was before the making of every of those Statutes, which we handle in this work, and thereby know whether the Statute be introductory of a new Law, or declaratory of the old, which will conduce much to the true understanding of the Text it selfe.'

²⁸³ I.e., the book containing the nation's statutes; for the antiquated statute book, see *infra* f. 106v.

at home and abroad. The civilians make great boast of their law, as sacrosanct, and not onely built upon quasi-essence of right reason, but free from such changes as vernacular laws are *obnoxious to. Against these, I must once more affirme,²⁸⁴ that this diseases of chang[e], if it be such, cleavs to all the dealings of humane kind[,] be they law or *policy, causing them continually to vary[,] conformable to the cotemporary fancys and opinions of men, as will fully appear in the case even of the civil law it [f. 90v] self.²⁸⁵ Therefore the books or learning of the laws may[,] as languages, be aptly distinguisht into the vernacular, that is, present usage, and classick or living onely upon shelves and in speculation; and the latter is as the nerve or strength of the other, holding it together from dissolving into incoherent and unaccountable dust.

To confirme this by making some slight inspection of other laws, it may be observed that there is none at present reigning in the world which had comencement by regular and solemne institution, but they are such as have growne up out of old customes and moderne occasions. But at length these fortuitous beginnings grow strong, and become revered for their authority, and in the style of ancient laudable customes, are sacred, as any laws [that] can be made. But yet they shall ever goe on in change, upon like occasions, as at first produced them.

1. I begin with the remaines wee have of the imperiall or civil law; which is received in many European states, but most deferred [f. 91] to in the hierarchicall institutions.²⁸⁶ Under temporall princes, it is no where accepted, but with great comixture with the municipall customes and institutions of the country, to which it gives place, serving cheifly to fill vacancys, where those fail. And that very consideration reduceth the consequence, as I observed,²⁸⁷ to a continuall flux of practick law.

²⁸⁴ See *supra* ff. 86v–87v.

²⁸⁵ See *infra* ff. 90v–93.

²⁸⁶ I.e., spiritual (Roman Catholic) institutions.

²⁸⁷ See *supra* f. 89.

But, put all that aside, and let us be in Rome it self, in the most flourishing ages of the republick. The laws had no better originall then as I have observed of other less famous places, that is, a *gallimaufry composition of the *twelve tables, **edicta prætorum*, **responsa prudentum*, **senatus consulta*, **plebiscita*, etc. sauced with infinite doctors and comentators on all of them. After 300 years which was but so low as Tully,²⁸⁸ the language of the twelve tables was growne obscure past recovery. So, as to all imediate practis, that text was obsolete, and the law become somewhat els growne up in the room of it, and formed, as must be, after the more moderne occasions of the citisens.

[f. 91v]

So low as Justinean,²⁸⁹ the law of the empire was so confounded with a surcharg of doctors and their variety of inconsistent opinions, as our law neerly is with variety of reported cases, and all of venerable authority, that every law-suit was **casus pro amico*, and the judges had ever reverend vouchers in oblidging either side. This plethora of law produced the Tribonean attempt of forming a select Digest or Pandect, which was an extract from all the law-authors of credit, of some and the best single opinion or judgment on every item, in the very words of the author, or authority, so as no[thing] **adversarii* or **dubii* should stand in that collection. Which compleatly done, had bin a most glorious work. But altho not half, and, in many respects, ill done, (if wee may beleev Hottoman and Gotofred²⁹⁰) it received the imperiall sanction to be the law of

²⁸⁸ (UK:Lbl) Add MS 32529: f. 236v adds: '(as he observes,)'.

²⁸⁹ I.e., Justinian [Justinianus] (CE 483–565), from 527 emperor of Constantinople, who appointed a commission of jurists under the presidency of the Roman jurist, Tribonianus, to draw up a complete body of Roman law. The commission executed its task by compiling two works: (1) *Digesta* or *Pandectæ*, being a critical restatement of earlier law and jurisprudential writings; and (2) *Justinianus Codex*, being a collection of imperial legislation. For the rationale of Justinian's corpus and its influence, see Kelley, *The Human Measure*, pp. 53–66. RN Books (1) lists several books relating to the results of the commission.

²⁹⁰ I.e., Denis Godefroy [Dionysius Gothofredus] (1549–1622), a Calvinist, councillor of Geneva and professor of law at Heidelberg. His commentary, which remained authoritative for nearly two centuries, was published in the foundational

the empire; and all other authoritys, except the imperiall order and rescripts, which made another collection called The Code, were abrogated; so that from thence foreward these collections were all the civil law. All which doings are set out at large in the prefaces to them.

[f. 92]

There had bin formerly a Code or collection of the imperiall rescripts, made in the reign of Theodosius the yo[u]nger.²⁹¹ But that fell under this [Justinean Code], and the cheif constitutions, maimed and mutilated (as Gotofred tells us) [were] transferred to that of Justinian. It so fell out, that after the dissolution of the Roman empire, and the *Gothick reignes began to setle and laws againe to respire, the Theodosian Code as Roman was used for the law of Italy together with the Salick and Lombard customes,²⁹² an extraordinary grace the Gothick kings indulged to their subjects, who of three [sorts of] law, might choos which they would be judged by. And all this while the Pandect and Justinean Code were lost and unknowne. At length that came to be discovered at Florence, and forthwith took its place as the onely civil law; and the Theodosian [Code was] layd aside untill learned men found, as I urg will ever be the case of obsolete laws, that it was the more perfect code of the two, and served exceedingly for enucleating the true sence of the law, which for want of using it, were mistaken or obscure, as Gotofred largely demonstrates.

text of the civil law of Rome, *Corpus juris civilis in quatuor partes distinctum...* (Geneva, 1583). Consisting of four parts, the first three parts contain the body of the Roman civil law in the time of Justinian, whereas the fourth part contains a supplement to the Justinian Code that is later in time.

²⁹¹ Theodosius the Great (CE c.346–395), Roman emperor of the East. According to Kelley, *The Human Measure*, pp. 53–4, his Code was designed ‘as a complete “guidance for life” for the Christian community of the West’; and Theodosianism in general ‘not only softened the rigors of ancient Roman law and showed favor to the Barbarians but also marked, along with the demise of paganism, the beginning of religious uniformity’.

²⁹² I.e., the customs of the Salians, a tribe of the Franks, and the customs of the Longobardi, a Germanic tribe that conquered Italy in the sixth century.

[f. 92v]

But according to the opinion of the *jurisperite word in the next ages after the discovery of the Justinean law, one would thinck there was arrived the most steddy and clear text of law that ever was extant in the univers, and such as did not referr to petty states or republicks, but was calculated for the regiment of the whole univers. And at this day the civilians, presuming it to be really so, idolize it as a non-pareil, miracle, and infinity of justice. As who doth not cry up their owne trade.

But notwithstanding all these perfections[,] we find the controversiall books and glosses about the text of this law, and the sence and force of it[,] are againe relapsed into an immens bulk and confusion, and repleat with various opinions and inconsistencies, such as provoked Justinean to disband the like once before. And after all, either from innovation or *obsoletion of words and expressions or [from] fals copying, the text in many places is yet so obscure, that as not hitherto, so not likely for the future[,] any Edipus²⁹³ will arrive to explain it. And in most of those instances wherein the glosses have inlightened the text, we may [f. 93] perceiv the good influence [that] came from the historicall retrospection of the very primevall authoritys of the Roman law and empire. As may luculently appear from the never enough to be admired coment of Gotofred.

It is not *mis-apropos here to observe that glossarys or etimologicons are best compiled in or neer the ages when notable-words or scientifick-termes are vernacular, and consequently best knowne. For then, the just occasion and import of them being to all nicety understood, they may, by perifrases and in terms less fraile[,] be explained, and so prevent infinite difficulty and criticall (I was about to say impertinent) guessing, thro which posterity arrives at a *conceipt [by which] they understand them. When living languages are permitted to pass away, and new words, termes, and phrases succeed in the place of the old ones, those are forgot and soon sink into irretrievable oblivion. But the way of the world is otherwise. Men are apter to loos their time in guessing at what they neither doe, or can know, then bequeath to posterity the sence of the language of

²⁹³ I.e., Oedipus, king of Thebes, noted for solving the riddle of the sphinx.

their owne time, which they doe exactly know.²⁹⁴ Who in perfect health thincks [f. 93v] of sickness? So who well knowing his mother tongue thincks it possible it should ever be obscure? Therefore an etimologicon in time, is worth forty, when time is past.²⁹⁵ It may seem impertinent to the present age to explain words that may be called comon, but time will bring to them substance and usefullness. And no science more needs this help then that of law, becaus men's estates, titles, and liberty often hang on a sence of words. And in the very Pandect it was thought fitt to dedicate a title to it, viz., **De verborum significatione*.²⁹⁶

2. All this I have observed of the civil law, [is] to shew that it demands to be explained out of history. I shall add another instance of a law supposed to be founded in nature, and not at all leaning on human institution, so may be pretended to continue ever the same; and that is knowne by the title of **jus gentium*. For nations never could or will meet in society to fix a law of comon intercoures amongst them; and yet in all forrein affairs, the law of nations is appealed to. If wee look for the true foundation of that law[,] [f. 94] it will be found to stand upon naturall equity and reciprocall good. And it may be say'd those are allwais the same; and why then should any humane practices be quoted in questions about it, or other authority used, then pure reason in abstract?

But it is found that in all such cases, they have recours to usage, and cite out of historys and state memorialls determinations in other cases of like fact or paralell reason. I have often fancied the

²⁹⁴ Cf. RN, *The Muscicall Grammarian* 1728, p. 222: 'arts have peculiar terms, that is a language understood by the professors, and some few els in the time; but in after times when such arts are attempted to be revived, who should make the dictionary, or adapt things to words used by obsolete authors?'

²⁹⁵ For RN's model, 'better one byrde in hand than ten in the wood', see Heywood, *The Proverbs*, p. 30.

²⁹⁶ I.e., the rubric of the last title of the *Digesta*. According to Kelley, *The Human Measure*, pp. 58, 210 and 230, the rubric was later used as a title for a new genre of juridical lexicography that treated not merely individual words but the common language of juridical discourse. Hence, it brought to the attention of scholars questions of interpretation, etymology and linguistic change, thereby encouraging an historical approach to the law.

authoritys of the law of nations much to resemble those of our comon law, that is, not as text but onely as evidence of law, which may be taken for clear decisions unless gross reason be shewed to oppose them, and then it is lawfull to vary. The historys of warrs, treatys, truces, and allyances, with their circumstances, are quasi reports of cases in the law of nations; and in the knowledg of these (as of a common lawyer in his law books) consists all the learning of the law of nations. Els why is all that pother in citing ancient and moderne historys, which wee find in the wrighters of it, and particularly in H. Grotius, in his *De jure belli & pacis*.²⁹⁷ [f. 94v] And what [is] all his book but a laborious or rather *chicaneus harrangue, to justifie the proceeding of his countrymen in their revolt from Spain? And like a good advocate he hath done it well and deserves his fee; and what is more, with the help of armes and good freinds, his learning carryd the caus.

I need say no more to shew that this law[,] called of nations, is changeable, then that the *sticklers in it ever appeal for their reasons and decisions to humane proceedings. The manners of men[,] and consequently the occasion or reasons for either rigors or indulgences, cannot stand at a stay but vary with circumstances. New *mischeifs or advantages, with expedients and salvos dayly emerg, as others formerly in practise grow obsolete and wear out. And then there may be a necessity to vary from prior examples in the like or seeming paralell cases.

A remarkable instance of this is the law of not rendring fugitives, and the refusing to doe it on demand is no just caus of warr. For it is considered that **humanum est irasci* [f. 95] as well as

²⁹⁷ Hugo Grotius (1583–1645), Dutch scholar and author of *De jure belli ac pacis libri tres...* (Paris, 1645), in which the law of nations is treated as a law binding all sovereigns by reason. Having lived through the eighty-year war between Spain and the Netherlands and the thirty-year war between Catholic and Protestant European nations, Grotius sought to restrain such conflicts on the basis of a broad moral consensus. English translations appeared in 1654, 1655, 1682, 1715, and excerpts in *Institutiones juris naturæ et gentium ex ejus libris de jure belli ac pacis excerptæ* (Cambridge, 1703). RN's father DN (2) described Grotius as 'great' and 'learned'; see North, *Light in the Way to Paradise*, pp. A3, 2. But RN, *General Preface*, pp. 62–3, does not admire Grotius's learned manner of expression.

errare. And for small, if not against reason, men are often persecuted; and being unfortunate at home, it is hard if they may not find an asylum abroad, and be protected under the laws and justice of a neighbour nation. And it is accounted honourable to a state, being protectors of the miserable, affording them the benefit of their laws, as supposing them competent to judg the whole univers. But yet the case of assassins²⁹⁸ is an exception from this generall law [of nations], lately entertained in the world, and not knowne to the ancient Greeks and Romans, from whom they [i.e., European nations] derive most of their authoritys. These [assassins] were a race of professed murtherers *perdue, sprang up among the Saracens or Turks, and *mischievous to mankind to a *patch *past all tolleration [or] protection. Therefore it is held by *jurisperite statesmen that such [as are assassins] being demanded ought to be delivered up, and a refusall is a just caus of warr. And some say that this was the case of the late Sir T. Armstrong in Holland.²⁹⁹

²⁹⁸ Lit., hashish-eaters, but from the sentence that follows, the Assassins of Alamut, a medieval sect of Ismailis who used to intoxicate themselves with hashish when preparing to commit political or religious murder. According to Montaigne, 'Of Vertue', *The Essayes*, pp. 358–62, p. 362: 'The Assassines ... are esteemed among the Mahometists of a soveraigne devotion and puritie of maners: they hold that the readiest and shortest way to gaine Paradise is to kill some one of a contrary religion'.

²⁹⁹ Thomas Armstrong (d. 1684), kt. (1660) was implicated in the Rye House Plot (discovered in June 1683) and escaped to Holland. He was outlawed for high treason, arrested in Leyden and brought in custody to England for trial at the King's Bench under Jeffreys. According to a letter dated 14 June 1684, Armstrong 'pleaded it was contrary to y^e law of nations for to seize him under another dominion, for w^{ht} he had done heere; and the rather, being a naturall subject to the States as being born at Nimeguen, and his mother a Dutch woman'; see Thompson (ed.), *Correspondence of the Family of Hatton*, vol. 2, p. 46. Jeffreys, however, not only denied his right to be heard on the ground that he was a traitor and outlaw but also ordered his execution on the ground that he had not surrendered according to the statute of treason. As the law then stood, if a man outlawed for treason surrendered himself within the year, he was entitled to a writ of error to reverse his outlawry so that he might stand trial; and although Armstrong returned just within the year, his return was not voluntary. Hence, when his family made an application for a writ of error to Jeffreys, FN and other law officers, the application failed; and Armstrong was executed. For detail concerning the reasons why the application failed, see RN, *Life/FN*, pp. 167–8, see also Holdsworth, *A History of English Law*,

I presume these instances are sufficient to [f. 95v] prove my assertion concerning the mutability of all practick law.³⁰⁰ I must admitt that under some constitutions changes grow faster then in others. As for instance under the Turks, the state expects laws should be strictly administred by their *cadees to the people, and neither affect nor will tollerate changes; and the people have not power nor spirits to attempt any. The gouvernement hath no need to make alterations, becaus their power is above all law and so not disputed. And I must allow their economy of justice less lyable to chang[e] then is [the case] in any Christian country. For their law and religion are both founded on the *Alcoran, and the rules of justice are but coments and conclusions drawn from the Alcoran; and they doe no more suppose a repeal or chang[e] of their law, then wee of our Gospell. So with them **in hipotesi* the law is eternall and imutable by any humane authority. But yet, conferring with such as have practis't in the country,³⁰¹ wee find what a *nose of wax is made of this holy law, as they call it, setting it [f. 96] on which side the *cadees pleas; and the **dernier resort*, as well of law as religion[,] is [the] *mufty, [who] shall actually declare (that is, make,) law as the state or his owne policy³⁰² or interest shall engage him. Whereby the cours of the law hath its flitting then, as in other places.

So some petty republicks, particularly that of Sparta, have bin very tenacious of their laws, becaus their pride and safety lay in them. And that people neither traded nor travelled, and were scarce hospitable to strangers; and their whole *policy tended to discipline of warr, which of all others is most strictly to be observed. Their citty was a camp, unfortified, and their laws, as I say'd [above,] but a discipline of warr. No wonder then that alterations moved slower

vol. 3, pp. 604–7. According to Miller, *James II*, p. 115, although treason trials were 'always weighted heavily against the accused, there is little doubt that most of those condemned [with Armstrong] had plotted against the King's life'.

³⁰⁰ See *supra* ff. 89 and 91.

³⁰¹ RN's two brothers, DN (3) and MN (1), as well as one of his nephews had all 'practis't' as merchants in the Levant; for details, see Grassby, *The English Gentleman in Trade*.

³⁰² I.e., political cunning.

among them, then among other people and nations that were more conversible. But in the history of the Spartan government, there are recorded abuses and changes which grew up, in opposition to the institutions of old Licurgus, much to the danger of the republick; and at length the whole economy of it, as all others have done, or in their time must be, submitted to intire³⁰³ [f. 96v] chang[e], revolution, or subversion. This slower process of chang[e] may also reside in more remote and inaccessible regions, as Island,³⁰⁴ and such places, where they know so litle variety, that they have no occasion to alter a word of their language, and consequently are as litle invited to any new projects in the ordering their municipall law. But they may have stood longer with less chang[e] then in other places, which reason extends **in tanto* to Muscovy, Sweden, Denmark, etc. But as for Europe in generall, where the people perpetually intermix affaires by trade, travell, and almost comunity of language, it must needs happen that their methods of living shall be more flux and revolving then elsewhere; and as their buissness sways[, so the people] follow in manners, laws, and language.

If I should take notice of any other particular instances of laws[,] such as wee may happen to know or guess at, for farther proof of this their streaming propensity, I should fall into much and needless repetition. Therefore here I rest that matter, and proceed to take a view of the English law, its entrance and probable devolutions. [f. 97]

[13.] Originalls of comon law

The comon law of England is the generall custome of England, unwritten, and derived by tradition from one age to another. But yet it is reasonable to suppose these unwritten customes had some regular beginning, or authentick institution, such as royall or **conventuall* acts, decisions or agreements, altho the same are in no sort extant. And it is also probable that custome having once gained

³⁰³ MS does not pick up the catchword ('intire') at f. 96v.

³⁰⁴ I.e., Iceland; and, as the rest of the sentence suggests, an allusion to the 'Islandish Dictionary' in Hickes's *Thesaurus*.

this authority of law, divers irregular practises and impositions may have usurpt that title, and so crept into the law. But it is more likely that casuall proceedings[,] moving from the peremptory way of dealing some magistrates use, may have bredd the like. For the successor is apt to follow the stepps of his predecessor, without *formalizing upon his reasons. These considerations open a wide gapp, beside the regular entrances of customes by [legislative] authority, and might greatly impeach the credit of custome. But as to that the law hath an antidote, which is that [f. 97v] customes must be reasonable, otherwise they are rejected as void; of the nature of which reason, anon.³⁰⁵

Concerning the originalls of custome[,] let me stay awhile to observe what the lawyers say of *prescription, viz., that nothing is valid by prescription which might not be good by way of *grant, becaus all prescriptions are supposed to comence by lawfull grant. But why may not laws and *statutes be supposed as well as grants, and then what custome or prescription may not be good? There may be a distinction between comon usages and private rights. The latter are when one man claimes a profit as comon, etc. in the soil of another, which they call **profit apprender*. This may be held stricktly to the law of grants, becaus it could not well have other comencement. But publick usages that have not such restriction are supposed to comence by some statute or *convention, and for that reason are construed with greater latitude.

This supposall of originall *legislature need not be strained so much as Hales sayd he would intend for support of a long quiet [f. 98] possession, that if no other title could be made appear, there was an act of parliment, which was lost.³⁰⁶ So as to particular or, as they are called, local customes,³⁰⁷ there is no need to strain so hard as to bring the whole nation together in parliment to find a foot for them; because in ancient times petty lords made laws that held in their socks. And altho kings might be in soveraignety above them,

³⁰⁵ See *infra* ff. 99v–100v.

³⁰⁶ See *supra* f. 87.

³⁰⁷ I.e., particular as opposed to general customs (the common law).

they dealt with the *vulgar onely by the means of their lords or, as the ancient notion was, their owners. Nay, it is not unlikely [that] there might be as many kings, or more, then now wee have sheriffs of countys, and that at C[a]esar's landing,³⁰⁸ as against him, the nation was rather a republick or confederacy of petty kings then any otherwise united people. For the more barbarous countrys are, the [more] governements come neerer to the patriarchall or state of nature,³⁰⁹ so that as many greater familys as are found, so many [petty] kings reigne. By this supposall, all[,] even the minutest[,] locall customes have as good foundation to be law, as the generall customes [f. 98v] of England, being both capable coordinately of a legislative beginning.

My Lord Cook is so adventrous to say that some constitutions cannot be laws, tho enacted by parliment[;]³¹⁰ as for instance, a judicature to hear and determine **parte inaudita alterä*, becaus it is contrary to a principle of naturall equity, requiring to hear both sides,

³⁰⁸ Caesar twice landed in Britain: first, late in the summer of 55 BCE and, then, in 54 when the Britons (those occupying the southern part of the island) submitted, although their subjection was only nominal.

³⁰⁹ RN *supra* represents the natural state of *barbares* as tribal (ff. 19–20v, 53) and those who are a 'little better than *barbares*' as communal (ff. 53–53v). For his earlier thoughts on the tribal state, see (UK:Lbl) Add MS 32529: f. 74v, where he writes: 'There are two states of mankind, considered with respect to the origination of power, out of which government and laws may regularly flow. One is patriarchall and the other political. The former is ... where a people have derived from one common stock, as the familys of Abraham and Lott, ... and consequently were paternall governours of their severall tribes.'

³¹⁰ In part 8 of his *Reports* (published in 13 parts between 1600 and 1659), Coke, reporting on one of his most famous cases, *Selected Writings*, pp. 275–76, stated that often the common law will void acts of parliament when they are 'against common right and reason, or repugnant, or impossible to be performed'. This statement has been described by Sheppard in Coke, *ibid.* p. 264, as perhaps 'the first judicial statement of a power of judicial review over legislation'. However, after 1610, according to Baker, *An Introduction*, pp. 210–11, little more was heard in England of judicial review of statutes; and 'Coke's doctrine was diluted into a presumption to be applied only where a statute was ambiguous or in need of qualification by necessary implication'.

before judgment is pronounced.³¹¹ Whither or not any *statute was ever made *obnoxious to this exception, I will not determine, but onely observe that it *behoves law makers allwais to reflect that reasonable statutes, after time hath devoured the *letter, have held their authority of comon law by custome; and others that are not consonant to naturall justice, even while the letter lives, shall consume, and grow obsolete, and as to all execution void, as if they were expressly repealed.

I shall not distinguish the more and less reasonable statutes as have bin made, (for it is but manners to suppose all had some reason in their time) but touch onely that order of [f. 99] *statutes as are sayd to be made onely **in terrorem* and without extraordinary and emergent provocation not to be executed, and desire it may be noted that all such [statutes] have bin found that lived, and by long disuse *contract, quasi[,] a repeal. For nothing is more slavish then being *obnoxious to dormant laws. And I must owne, as to this notion, *in terrorem*, I have not mett with a more profound absurdity in *legislature, then it is. But to pass all such, as for certein will never turne to comon law, and returne to my Lord Cook. It seems he had read Tully *De legibus*, who makes very slight of the Roman senatusconsults, plebiscites, etc. made[,] as in seditious times many were with crabbed porpose, to help one faction to oppress another; and [he] says, that men may style them as they pleas, but any thing truer then laws, which cannot subsist against naturall equity.³¹² It's true they must be obeyed, as the will of a tyrant, being a species of violence and force, but can never be accounted laws. Whither his Lordship had his notion from the heathen orator [Tully] or not, I pretend not to determine.

³¹¹ According to Coke, *Selected Writings*, p. 531, 'to judge in a point of difference, hearing but one partie speake, is assuredly to be unjust, for this sentence is directly true: ... Who judgeth a cause for the one partie, not hearing, the other, though what he doth, may stand to be upright, yet is the Judge unjust.'

³¹² See Cicero, *De legibus*, 1. 42–52, for an important series of linked arguments about natural justice, starting with the 'foolish belief' that 'everything decreed by the institutions or laws of a particular country is just' and considering next the laws of tyrants that came in when the democrats were ousted by the oligarchs.

[f. 99v]

But now to returne to the consideration of custome, that it must be reasonable.³¹³ Here the word reason hath a peculiar sence, and is very lyable to be abused. For reason more or less is a nice thing, and breeds controversie. For men will serve to their owne side, and then say, 'have not I reason?'. And if any *inconvenience attend a custome, (and what humane condition is without inconvenience?) men that are the losers cry[,] 'it is void, being unreasonable.' On the other side if a bad custome may be of any benefit, and it is a bad one indeed as may not, such as profit say[,] 'it is most reasonable and ought to stand.' Therefore to take away this *chicane, it must be understood, that reason enabling custome or comon law is not comparative, whereby any may say, 'another custome would be better, and therefore this cannot be law.' Which way of arguing would make the law incertine, which is most of all against reason. For what is more problematique then points of common convenience? or when were all mankind equally benefited by any one law or rule in the world? [f. 100] But reason[,] in this sence, is negative, that is, not opposed to naturall equity so as to be inconsistent with it. It may be better or wors, to this or that person incidently[,] as may happen in the execution, and all the while be good law. So there might be much better laws substituted in the room of the old ones, when the parliment thincks fitt to order it; but till then the old with all their faults continue in force, not being incompatible with naturall justice. In the buissness of law-making, or -mending[,] vtility in generall is a maine consideration; but it is no answer to the question, what is the law? But if the evidence of law be dubious, as in most points, it is reasonable that comon utility should turne the scales. Hence [I] conclude that[:]

Nothing of reason can be opposed to enervate a clear usage, but what, in my Lord Cook's sense,³¹⁴ would disable even an act of parliment. Els it is a most sacrosanct peice of generall justice to support all settled and knowne usages, especially in the fundamentalls

³¹³ See *supra* ff. 97–97v.

³¹⁴ See *supra* f. 98v.

of power and jurisdiction[,] about which men are apt to be most pervers [f. 100v] and perniciously contentious. Whoever is a stirrer up of chang[e], and consequently of confusion in the rules and exercise of power in a setled state, deserves multiply the curs, which our [church] congregations in their strickest penitences discharg on those who doe but remove a private landmark.³¹⁵

Now to resume our first maxime,³¹⁶ that the comon law is but custome, rather not *iniquitable, then reasonable, which had some plausible comencement, tho wee know not how nor when; wee must subjoyne this generall note, that in its process downe to us, it is so varied by the comon incidents of humane affaires, that if we had before us the true originall acts and proceedings that were the first spring or occasion of them, wee should not find them fitt as Tully's, but so unlike, as might move one to say, **quantum mutatus ab illo*? Perhaps there may be some gross symptome, or note, by which one may guess [that] they are allyed, or that the one had given occasion for the other; and this is all, had wee [f. 101] the satisfaction of such knowledg of originalls, wee should find out by it. And assuredly it would be as great [a] pleasure to compare the beginnings of laws, with the succession of them in after times, as it is to know the small occasions and incoations of states and empires, and view the process of them in history downe to our owne time. But wee are safe enough from the injoyment of the former, becaus the history of laws is wholly neglected, and therefore wanted in the world. And that litle wee have is hammered out of the criticall endeavours of *postnate students; and how frail are all those helps compared with the cotemporary notions, if they were preserved for us. And as for the primevall originalls of the comon law, they are so farr from our

³¹⁵ *remove a private landmark* (one of the Mosaic laws); see Deuteronomy xxvii.17. According to RN, in c.1683 the clergy in Hickes's London parish, i.e., All Hallows from which Hickes resigned in 1686, 'procured themselves to be indicted at the Old Bayly, for permitting images to continue in the church; and for evidence to the grand jury, an old angel with a trumpet that had for some time watched over the clock in the quality of a decoration, was brought downe in a sack and shewed for a popish image taken out of his church'; see RN to Hilkieh Bedford, Jr., 2 July 1717 (UK:Ob) MS Eng. Hist. b.2: f. 171v.

³¹⁶ See *supra* ff. 97–97v, 99v.

reach, that instead of resolving our moderne usages by evidences of antiquity, wee have nothing but what is moderne to help us at guessing at antiquity. Wee are so *disevidenced of all British antiquitys, that wee must owne ourselves, as to them[,] to grope in Egiptian [f. 101v] darkness.³¹⁷

Therefore in this speculative retrospection, or etimologicall study of law, it is expedient to fix some points of time, or **epocha*, from which discending, the evidences are so considerable, as the knowledge of them may be accounted necessary for the forming a good lawyer; and from thence ascending, onely for curiosity and critiscisme, tending to the accomplishment or adorning such when formed. Thus the generall historians of the world devide the ages into sacred, fabulous, and historicall.³¹⁸ And as for the fabulous, make [it] their best, not wholly rejecting such relations as they have, tho from professed fablers the poets; and therein have more use of judgment and all the facultys of the mind, then in dealing with the most nice historick authors. And for the like reason, I could wish some more applycation had bin [made] by men of law, to trace the beginnings of customes, or as wee say, comon law, then is to be observed in any of their writers[,] ancient or moderne. For such would have handed downe some light in a subject as that is of most difficult conjecture, which now lys destitute and fresh.

[f. 102]

The **epocha* of necessary learning, I take to be the reigne of Henry 2[d,]³¹⁹ when private persons first dared to write of law and in

³¹⁷ Cf. Hale, *The History of the Common Law*, p. 37: 'the Original [of the common law] ... is as undiscoverable as the Head of the Nile'.

³¹⁸ E.g., Bacon, 'Wisdom of the Ancients', *The Essays*, p. 195: 'The antiquities of the first age (except those we find in Sacred Writ) were buried in oblivion and silence; silence was succeeded by poetical fables: and fables again were followed by the records we now enjoy.'

³¹⁹ Henry II (1133–89), king of England; crowned 1154. According to Baker, *An Introduction*, p. 13, the 'foundation of the common law has commonly been traced to the reign of Henry II', i.e., RN's '*epocha* of necessary learning'.

particular [when] Glanvile,³²⁰ our first law author[,] wrote. As for the *Mirroir*³²¹ it is since. For it cites the actions of Glanvile, who was a cheif justiciary, and consequently, no mean legislator in those days. Wittness the noveltys he is sayd to have introduced, and particularly, that excelent rule in a *writt of right, of joyning the *mise, or waiving battell, and bringing the tryall to be as upon a generall issue to the *verdit of a jury or voice of the country present in court.³²² This was the check that was given to that barbarous *tryall by battell; but more of this elsewhere.³²³

As to proceedings before Henry 2, wee may consider the time in 4 stages:³²⁴ 1. The aboriginall or Brittish; 2. The Roman; 3. The German, that is, the Saxon and Dane; and 4. The Norman vsages.³²⁵

1. Reflecting upon the Brittish state, or antec[a]esarian time,³²⁶ a doubdt springs in my mind whither it is possible their customes[,] if

³²⁰ Ranulf Glanville (d. 1190), supposed author of *Tractatus de legibus et consuetudinibus regni Angliæ*, the first essay of its kind on English law. For an assessment, see Hall (tr.), *The Treatise ... called Glanvill*. RN owned the edition of 'the Patentees' published in 1673; see RN to George Hickes, 12 October 1705, (UK:O) MS Eng. Hist. b. 3: ff. 222–223v, with attachments, ff. 224–231v.

³²¹ Written c.1290 during the reign of Edward I, it was afterwards published in a translation from the old French as *The Booke called the Mirrour of Justices....* (London, 1646). Coke, *Selected Writings*, p. 338, claimed that in the reign of Edward I, there were additions to the text by one Horn, probably Andrew Horn. Both the 1646 and the re-issue of 1659 included a translation of a second book, treating the diversity of courts and their jurisdictions. According to RN, *Life/FN*, p. 299, FN's term 'abusions' was borrowed from the *Mirrour*.

³²² In the fourteenth century, trial by battle became 'virtually' obsolete in criminal cases, an obsolescence that 'was directly related to the development of an alternative and more enduring method of trial by jury'; see Baker, *An Introduction*, p. 507.

³²³ Missing in this text, but perhaps referring to Selden, *The Duello or Single Combat from Antiquities derived into this Kingdome of England....* (London, 1610).

³²⁴ MS has '3. stages:', perhaps recalling the stages RN previously identified for 'Gothick building'; see RN, *Of Building*, pp. 109–14; or perhaps an error from reading Selden, 'Notes', pp. 6 and 13, who, at first, identifies the ancient British, the Saxon (including Danish) and the Norman customs and then, later on, refers to the antiquity of British laws before the civil law of Rome.

³²⁵ See *infra* (1) ff. 102v–105; (2) ff. 105–107v; (3) ff. 107v–108v; (4) ff. 109–110v.

wee know them[,] could survive, so as to have any share in our comon law, and the rather becaus all authors even of history [f. 102v] have either waived or delivered them but as old wifes' fables, and much more impertinent respecting so different a subject as law. But I have at last concluded them, and therefore an inquest persuant, to be materiall. For wee must observe [that] mankind are formed by education, and so tenacious of the customes and usages they have lived under, that it is easier to extirpate the whole race of them, then to alter their *humour. And so farr as they happen (like beas fighting) to coalesce with their enemyes[,] they shall proportionally carry in of their customes and language to be blended in the comon stock. Whatever the ancient customes of old Brittain were, I make no doubdt but many of them have bin lett downe even to us, thro all those dismall and prodigious metamorfoses, this nation hath undergone. And if no direct evidences of any such are to be found, perhaps historys, or politique writers of other nations cotemporaneous, may afford some grounds for curious conjecture or reflection.

There is reason, that these ages[,] as to all history of their *policy and laws, should be most confused, [f. 103] if not³²⁷ unaccountable, from the barbarous and savage condition of them, void of literature, as well as from distance of time and succeeding calamitys. The people must originally be drawne over from the continent, and probably the neerest parts, and so from Gaul;³²⁸ altho the countrys were never, as some dream, united by an isthmus.³²⁹ The voyages from the more northerne or westerne and southerne regions, were more perilous, and not undertaken till men were expert

³²⁶ I.e., before 54 BCE; see *supra* f. 98.

³²⁷ MS repeats 'if' from f. 102v, where 'not' is the catchword.

³²⁸ Cf. Tacitus, *On Britain*, p. 61: 'Who the first inhabitants of Britain were, whether natives or immigrants, remains obscure.... On a general estimate, however, we may believe that it was the Gauls who took possession [because in] both countries you will find the same ritual, the same religious beliefs [and there] is no great difference in language'.

³²⁹ Hale, *The History of the Common Law*, p. 82, was also sceptical about the isthmus theory.

in sea affairs; but crossing the Channell was but a morning's work, and soon proved. As for the fable of Brute,³³⁰ credit Cambro-Britannus.³³¹ Then the ancient Gallick remaines, may give some light to the antiquitys of Brittain, and therefore worth inquiring after. That there was a nationall religion, as well as laws and ordinances among the Brittaines before Caesar, appears from him. And it is not unlikely that the laws and religion, as among the Turks, were set upon the same bottom and managed by the clergy, then called druids, who had equall reverence in Gaul as in Brittain, tho here perhaps had [f. 103v] more sway in the state.³³²

It appears they used that naturall and obvious means of preserving things in memory, by chiming words and sentences; such as wee call verses, as might be sung in tunes, which were taught by the elder to the yo[u]nger, and so the means of wrighting and records, then wanted, in some sort supplied.³³³ The historians say, their religion was thus preserved, and why not their laws also?³³⁴ or

³³⁰ I.e., Britain's mythical founder, Brut (Brutus), a refugee, with his sons, from Troy. According to Selden, quoted in Christianson, *Discourse on History, Law, and Governance*, p. 18, 'some both very Learned and very Judicious persons ... suspect that the story is patched up out of Bards Songs and Poetick Fictions taken upon trust ... on purpose to raise the *British* name out of *Trojan* ashes'.

³³¹ I.e., John Owen (1564?–1622?), who was born in Wales and read law at Oxford. His Latin epigrams were published in a series of volumes, of which there were numerous editions, and at least two, though perhaps not complete, English translations (1628, 1677). RN's 'fable' is in Book 3, epigram 6, which refers to the crown of gold of 'Brute'.

³³² In his *Commentarii*, Caesar included a history of the first seven years of the Gallic war, in which he described the druids or priest-judges, an order of men among the ancient Celts of Gaul and Britain who preserved and enforced the Celtic religion and customs. Coke, *Selected Writings*, pp. 64–5, thus inferred that the French druids were nothing else 'but a very Colony taken out from our British *Druides*, as *Caesar* himself ... affirmeth'. Selden, 'Notes', p. 12, seems to have agreed with Coke; but Hale, *The History of the Common Law*, pp. 81–2, argued that this supposition was 'remote' and unnecessary.

³³³ Baker, *An Introduction*, p. 30, was tempted 'to think that the Welsh bards and Irish "brehons" who preserved the Celtic customs by memory and verse represented a continuation of the druidical tradition noticed by Caesar'.

³³⁴ Cf. Hobbes, *Leviathan*, p. 319: 'And in antient time, before letters were in common use, the Lawes were many times put into verse, that the rude people

might not the people in their language involve religion and law under one and the same terme? Hence one may guess, that this maxime of the comon law, to be the unwritten custome of England, may be derived even from the Brittish economy, by whome this versifying way of record was industriously expres't. There are not a few old saws of the law yet observable in some countys, which may shew the manner of this art. As in the county of Kent, the father to the bow, and the son to the plow³³⁵ means, that land is not forfeited, tho the father be hanged but his son shall inherit and plow his lands. All nations and countrys have customes, which have place with [f. 104] them as law, but none that I know, as England[,] have their whole law to lean upon custome, such as our comon law doth. The Norman[,] our next neighbour, comes neerest, as wee may see in their *Grand Custumier*.³³⁶ And those [Normans] might have much of it from the Gauls, our ancestors, and so it came full to us, by the conquest round againe.³³⁷

The case of the full and declared union of Wales with England might afford us much imployment to declare and resolve.³³⁸ And it were a fit subject for some of that people to undertake, who know both the language and native ordinary usages of the country, and know best where to look for the antiquitys of it, as well as judg of their value and probabilitys, which wee **paisons* cannot so well doe. There is a slight peice called *The History of Unions*, printed[,]³³⁹

taking pleasure in singing, or reciting them, might the more easily reteine them in memory.'

³³⁵ = *the father to the bough, and the son to the plough*, hence, 'The Custome of Kent is, that Gauilkind land is not forfeitable nor Escheatable for Felonie'; see Bacon, *Elements* [II], p. 47, and Baker, *An Introduction*, p. 266.

³³⁶ I.e., *Le grand Coutumier de Normandie* (mid-thirteenth century), which Hale, *The History of the Common Law*, p. 75, described as the 'best and indeed only common Evidence of the ancient Customs and Laws of Normandy'.

³³⁷ I.e., the Norman conquest; see *infra* ff. 109–110v.

³³⁸ In 1536 Welsh subjects were granted the same laws and liberties as England, including representation in parliament; see Baker, *An Introduction*, pp. 30–31.

³³⁹ *The History of the Union of the Four Famous Kingdoms of England, Wales, Scotland and Ireland ...* [by M.H.] (London, 1649, i.e., 1659).

which doth but catch a few crumbs³⁴⁰ from the surface of our comon historians. Mr. Dugdale hath a catalogue, among the law books, in his *Origines*[,] of Welsh law-manuscripts.³⁴¹ The *statute 27 Henry 8 [cap.] 26 [f. 104v] speaks of great discrepancy between the laws and customes of England and those of Wales, and abolisheth the latter, if inconsistent with the English. And there is a claus in the Act, enabling a comission to inquire of and returne the Welsh laws and customes, and that the king in a time prefixt might thereupon continue or abolish them as he pleased. It is not in my notice that any thing was ever done upon this comission; if not or being so done[,] it is lost. The more's the pitty. It must needs have bin an excellent **speculum Walliæ*.

Some things are here observable. 1. That the Brittish customes were much discountenanced by the Saxons. And consequently very litle share of them is derived downe to us thro them, especially of such as are not coincident with the Saxon laws.³⁴² 2. That it is possible the Welsh customes might have more of the Roman law, then the Saxons cared to entertein. Whereby the portion of law left by the Romans in England lay coopt up with the Welsh, during the Saxon rule, but came in plentifully with the Norman. 3. That the Welsh justice was provinciale³⁴³ and not *palatinè. And there needs

³⁴⁰ MS has 'cromes', i.e., sticks with hooks to pull down boughs of trees, draw weeds out of ditches, etc.

³⁴¹ William Dugdale (1605–86), kt. and garter king of arms (1677). For the 'Welsh law-manuscripts', see Chapter 22 ('British Laws') in Dugdale, *Origines Juridiciales, or Historical Memorials of the English Laws...* (London, 1666), pp. 54–5. For a brief description of the book itself, see Holdsworth, *A History of English Law*, vol. 6, p. 596.

³⁴² The Angles and Saxons not only brought with them Teutonic customs different from those in Britain and Gaul, but also pushed the Celtic people back into the west of the island, into Wales, Cornwall, and south-west Scotland; see Baker, *An Introduction*, p. 2.

³⁴³ I.e., provincial justice was dispensed at each county town or other appointed place by the assize system, in which twice a year judges would be assigned to each of six circuits, through which they rode with their clerks, servants and records during the Lent and summer vacations. For the Commission of Assize, see *infra* f. 110v.

no other proof of this [f. 105] then that it is in a most extraordinary manner saved and provided for them, by the Act, and so continues at this day, to their *comfort.³⁴⁴ 4. and lastly, [That] from this vnion, and reserve of the justice in their country, I demonstrate that country or provinciall justice is an ancient Brittish right. And it's pitty it is not generally allowed,³⁴⁵ but of this elsewhere.³⁴⁶

2. The next stage of time is the entry and government of the Romans. They held their power more or less neer 400 years.³⁴⁷ The nation was by them ruled in the forme of a province, and it was a Roman policy³⁴⁸ to plant their civil laws and luxury in it, as a means to render the people *mansuete under their yoke. There is no doubdt but all the judicature of the Roman magistrates was dealt according to the imperiall law. What els made that excellent justiciar, Papinian,³⁴⁹ and probably others[,] as eminent here? And that hypocriticall philosofer Seneca,³⁵⁰ had never, contrary to his owne

³⁴⁴ (UK:Lbl) Add MS 32529: ff. 116v–117: 'I cannot enough admire the conduct of the Welsh people, who ... retein at this day both originall and judiciall process of law [i.e., writs], issued[,] executed and returned in their owne country, as it stands now devided into countys; and have judges itinerants twice each year, that dispatch the issues and tryalls, whereby the countryman is at the beginning and end of his caus, and till the Chancery grew so much upon the [common] law, as of late years, they feared no sumons or disturbance from London.'

³⁴⁵ I do not understand the meaning of this statement, because RN himself rode the circuit when FN was an itinerant judge of assizes. Indeed, the assize system 'remained part of the English way of life' from the thirteenth century until it was abolished in 1971; see Baker, *An Introduction*, pp. 20–22.

³⁴⁶ Missing in this text, but perhaps referring to (UK:Lbl) Add MS 32529: ff. 119v–122, in which some of the issues in this paragraph, as well as the first paragraph *infra* f. 109, are placed in a different context.

³⁴⁷ I.e., CE 43–409. According to Baker, *An Introduction*, p. 2, whether the Roman colonisation of Britain made any lasting impact on native customs is open to debate.

³⁴⁸ I.e., political cunning.

³⁴⁹ Papinian [Aemilius Papinianus] (d. CE 212), Roman jurist, admired for his great erudition. He travelled to Britain in 208, where he heard cases in the forum of York.

³⁵⁰ Seneca [Lucius Annæus], the younger (c.4 BCE–CE 65), statesman, philosopher, playwright and an adherent of an eclecticism of Stoicism. According

doctrine, traded here by usury, and oppressed the people with his extortions, upon the security of any other law then that of [f. 105v] the empire. If I may here be allowed my conjecture[,] I must say, that I doe not beleev [that] the imperiall law took place much out of the justice courts of the Romans themselves, and that the interests of great men, that were so considerable to be brought to be judged there, and the wrangles of the citisens where they had settled *magistracys about trade, detts, etc., went most after the imperiall law. But the comon or lesser people[,] for their *petit interests, were ruled by Brittish customes, under the authority of their imediate lords or superiors; however those [superiors] were forced to submitt to the Roman jurisdictions.

But still while the law of the empire was intirely exercised by the Roman magistrates, and as to all others onely strongly recomended, and for neer 400 years together[,] it must needs fall out, that very much of the civil law crept into practis, and became denizen[ed] of England, as its owne proper customes. Which is so naturall to conceiv as necessary to happen, that I need not much insist on it. And it is not difficult to shew abundance of the imperiall law in our comon law. But whither all, and which parts of it[,] came [f. 106] in from the immediate influence of the Roman power, and which by the latter influence of the clergy under the Norman kings, is not so easy to determine. I am inclined to beleev the latter hath much the greater share in this merchandise, becaus the Saxons as Germans were so avers to the Roman power, as to hate their laws, and that bred such seclusion of it into Wales, as was observed.³⁵¹ One note of the imperiall law with us is a *company of Latin maximes that are dispersed in the old books. But those[,] such as are borrowed from that law, are of the latter importation; the rest must needs in the Saxon's time wear out. Yet this symptome doth not allwais hold, for

to Corcoran, 'Introduction', *Seneca*, vol. 7, pp. ix–x, there were 'ugly stories of Seneca exploiting his position to acquire enormous wealth, such as lending money to the Britons (which they did not want) at interest rates so exorbitant and unjust that, when he recalled loans [in 61], Britain revolted under the leadership of Queen Boudicca'. If the stories are true, Seneca's conduct was contrary to his Stoic tenets and, hence, 'hypocritical'.

³⁵¹ See *supra* f. 104v.

divers eminent lawyers and judges have affected to coyne maximes after the style of the **regulâ juris*. There is not a litle of this sort dispersed in the works of my Lord Cook,³⁵² and bundled up together by my Lord Bacon.³⁵³ In their age the king was a scollar, and that made a fashion of larding all law as well as devinity with scrapps of Latine, as the coevall books demonstrate.³⁵⁴

[f. 106v]

3. Our next stage is the Saxon and Danish rule,³⁵⁵ who being of the same continent and *Gothick, I put them together. Their gouvernement was strangely difform and disordered; [and there was] litle of peace to engender any good laws, till the coalition of the eptarchy.³⁵⁶ And then wee have some solemn articles of laws, as may be seen in Lombard's collection,³⁵⁷ which is the antiquated statute book of England. Here wee find the economy of hundreds and

³⁵² Coke, who coined numerous maxims, glossed Littleton's word 'maxim' thus: 'a sure foundation or ground of Art, and a conclusion of reason so called'. 'And that which our Author [Littleton] here and in other places calleth a Maxime, hereafter he calleth a Principle, and it is all one with a Rule, a common ground, *Postulatum* or an *Axiome*, and it were too much curiositie to make nice distinctions betweene them.' See Coke, *Selected Writings*, p. 646.

³⁵³ Francis Bacon (1561–1626), 1st baron Verulam and viscount St. Albans; lord chancellor (1618). For twenty-five maxims (out of 300 collected), see Bacon, *Elements* [I].

³⁵⁴ MS may have a faded or erased catchword ('It'), which has not been carried over at f. 106v.

³⁵⁵ I.e., 410–1065 (the Danish invasions occurred in the ninth century).

³⁵⁶ I.e., heptarchy (from Gk., *heptarchia*), a term used to denote seven English kingdoms of Kent, Sussex, Wessex, Essex, East Anglia, Mercia and Northumbria during the period of their co-existence from the sixth to the eighth centuries, when over-lordship was exercised by seven 'petty kings' (in RN's phrase).

³⁵⁷ I.e., William Lambarde (1563–1601), antiquary and keeper of records at the Rolls Chapel (1597), whose first work was a collection and paraphrase in Latin of Anglo-Saxon laws and treaties, together with the laws of Edward the Confessor and William I mentioned *infra* by RN. Published as *APXAIONOMIA, sive de priscis Anglorum legibus...* (London, 1568, re-issued 1644), it included an explication of words and things ('Rerum et Verborum Explicatio'), as well as a map of the heptarchy.

shires,³⁵⁸ which I account was a sort of continuation of the eptarchy. For during that rule, the nation was provinciated out to judges or barons, who had the charg of certein devisions under those petty rules. And the kings themselves interposed by way of *iter and *appellative justice. So under the grand Saxon and Danish³⁵⁹ monarchy, the kingdome was digested into countys and their subdevisions, as *scryas, hundredus, trythingas,³⁶⁰ etc., which was their economy as to the conservation of the publick peace. And inquests by twelve were then in use;³⁶¹ and no wonder, for in Sigonius³⁶² wee find frequent missions of the German and Italian potentates **ad inquirendum per sacramentum proborum hominum*, sometimes, 3, 5 or more [f. 107] as was thought needfull. It was the style and mode of Europe, which came in use together with Christianity. For that holy religion taught men the greatest veracity under sacred oaths; and no buissness was safe or well in those days, that was not so confirmed, the rather becaus churchmen claimed jurisdiction of oaths, as **pro lesä fide*.

³⁵⁸ By the tenth century a single kingdom of England was established, and the whole country was divided into shires (counties) and their subdivisions (hundreds, tithings, etc.), each of which had an assembly that combined judicial, administrative and legislative functions; see Baker, *An Introduction*, pp. 6–8 *et passim*.

³⁵⁹ MS has a line drawn under the first two letters of this word, referring to the remark in the left-hand margin opposite: '*quære*'.

³⁶⁰ The last division, the tithing, was a rural division—one tenth of a hundred—that sometimes coincided with the smallest assembly (the village). Originally, however, it was a company of ten householders in the system of Frank-pledge, about which RN wrote Hickes on 12 October 1705 (UK:Ob) MS Eng. Hist. b. 2: ff. 222–223v.

³⁶¹ The inquests for swearing men on oath to furnish true information had 'roots in Scandinavia and in the old Carolingian empire' and were used before 1066 in both England and Normandy; see Baker, *An Introduction*, pp. 72–3.

³⁶² Carolus Sigonius (c.1524–84), Italian epigrapher and one of a line of humanists who attempted to reconstruct legal antiquity. Kristeller, *Renaissance Thought II*, p. 11, singles him out as a direct forerunner of 'the great historians of the seventeenth and eighteenth centuries'.

Wee must distinguish in this rule between the heathen and Christian part of it.³⁶³ The former drove away the British laws as well as people, to make room for the Saxon adventurers[,] their laws and religion; and I beleev they were professed enimys to all that was Roman. What els could be expected from a German people, who were scarce ever in full peace with the emperors? And for this reason the **reliquiæ* of the Romans in England much less appear to us then would have done, if that **rage* of Germans had never come. But time wore much of it out. And afterwards, when the kings began to be Christian, and the intercoures from Rome began, wee must beleev that the clergy soon began to scatter their Latin in all affairs they dealt in; and by degrees [they] brought in use, and credit, the ordinances of the³⁶⁴ [f. 107v] spirituall empire, in the Rome of the temporall one, that was almost forgott. And this must needs be carryed high when they pretended as they did to be a faction of strength able to call in a forrein prince[,] the Norman[,]³⁶⁵ to their interest, and by turning the scales of power, translate the crowne, without any previous articles or originall contract, from the crowned king in possession, to a forreiner and his crew of adventurers.³⁶⁶

I must not forget to observe, under the Saxons and Danes began the use of wrighting in England,³⁶⁷ and laws were put forth in articles, as the way of that age was, generally comprising the old customes rather then new laws. This practis was under Christianity, as appears by the tenor of those laws wee have, and savour manifestly of the clergy. But new things are allwais idolized, as they

³⁶³ Britain, which had been Christian under the Romans, reverted to paganism at the time of the Saxon invasion; but from the latter part of the sixth century, the Roman church sought to reconvert Britain by missions.

³⁶⁴ MS does not carry over the catchword ('the') at f. 107v.

³⁶⁵ I.e., William (1027–87), duke of the Normans; see *infra* f. 109.

³⁶⁶ RN, *Notes of Me*, pp. 214–16, suggests that self-interest was the motor for the Norman conquest, as well as various other 'turnes' in the 'scales of power'.

³⁶⁷ According to Baker, *An Introduction*, p. 9, the two most significant innovations of this Anglo-Saxon period were: (1) the constitutional ascendancy of the king and (2) the employment of writing in the business of government.

say, new brooms sweep clean.³⁶⁸ So in these times wrighting was accounted a means of eternall memory of things, and sufficient to preserve laws inviolable, so as incerteintys and disputes should be never after so much as thought of. And the monastick life was in strang[e] credit. Few considerable persons lived without designe of building, endowing, and dying in monasterys, as the catastrophe of most of the Saxon kings and queens demonstrates. And the most considerable [f. 108] and in their time, active of the people, falling into that cours of [monastic] life, made up with scribling what they left behind them of transaction.

For this, I call to wittness the very great number [of manuscripts] that remaine of monkish writers, and particularly of history, (among vast quantitys of like trash not extant) wee [now] have in print. These writers shew the incuriosity and defect of those ages; but doubtless in their time were admired; as the **primordiæ* of musick were idolized by the Ancients,³⁶⁹ before the art was a quarter understood. But yet [the writings of] all these monkish authors, [tho] a disordered parcell of trompery, may here and there afford a scrapp of gold case worth picking out [from the dross], and made usefull by passing the test of exquisite judgment. And altho so often as they have bin searched, I beleev curious persons may yet goe over them without much loss of time, for many shall take good hints from passages, never before thought of any moment.

It is probable that much of our country law and customes [came] from the Danish shop as from any other.³⁷⁰ For they mined with the people here, and lived well enough with them, so that in the northeast part of England the better half of the people were Dane. [f. 108v] It is true they once had the mastery, and the whole nation [was] in subjection to their king; but it was not all-along so. Vnder the Saxons there was nothing of consort with the Brittaines, but all

³⁶⁸ *new brooms sweep clean*: see Heywood, *The Proverbs*, pp. 44, 137.

³⁶⁹ Cf. RN, *The Musicall Grammarian* 1728, p. 223: 'among the Greek republiks, that art [of music] was had in veneration, as if law, liberty, justice, and all morallity depended upon it'.

³⁷⁰ The very word 'law' is believed to have been given to the English language by the Danes, according to Baker, *The Introduction*, p. 3.

was dominion and oppression; and there was litle or no comixture of the Brittaines and them. The former[,] taking sanctuary among the mountaines, lived in separation; all els were meer slaves, and but few of them left, so great and fine was the Saxon cruelty. I shall conclude this paragraff with one instance, to continue what I touched before,³⁷¹ that the Roman laws held longest among the Brittaines. And it is that famous case, whither the custome of Wales, for a woman before a judg examined, might alien without *fine. Resolved she might, becaus not *contrainant to usage in England. This[,] allowing a woman a power to dispose, is a Roman law, and opposite to all *Gothick institution which perfectly disables weomen.³⁷² And the *trick of a fine is grounded on judicature. For since a finall judgment, if the law goes on[,] would bind a *woman covert, why may not an *interlocutory accord bind her? ‘Yes,’ say the judges, ‘if the woman be privately examined as to her freedome’, etc. Otherwise the comon law in all instances disables weomen.

[f. 109]

4. The last stage is the Norman,³⁷³ and that is a *swinger. For the Conqueror³⁷⁴ with his griffin claws seised on the law and turned it into a revenue. He left to the country justice nothing but comon felonys, which could not stay; and 40 shilling wrangles,³⁷⁵ not worth, and indeed intollerable to be drawne to his palace. So also military feudall titles, which by the way was all Norman law.³⁷⁶ The people

³⁷¹ See *supra* ff. 104–105.

³⁷² The disability resulted from the doctrine that a married woman’s legal personality merged during marriage in that of her husband; see Baker, *An Introduction*, p. 466.

³⁷³ I.e., 1066–1215.

³⁷⁴ I.e., the duke of the Normans who was crowned William I in 1066.

³⁷⁵ Local courts were forbidden to entertain suits for more than 40 shillings without royal sanction, but this was not legislated until 1278, i.e., after the reign of William I; see Baker, *An Introduction*, pp. 22–3 and 61.

³⁷⁶ Feudalism came into sharper focus under William I, when larger feudal units (honours) were erected over smaller pre-existing units (manors), each with its own customs and legislation administered through its own supreme court; see Baker, *An Introduction*, pp. 225–6.

might wrangle at home how they would, but he kept the finall judgment to a *writt of right out of his chancery;³⁷⁷ all which is more diffusedly observed elsewhere.³⁷⁸ All the written law wee have[,] from the conquest downe to Glanvile, is some articles of the Conqueror's preserved, (if they are so) by chance; and some[,] that in Mr. Lombard's collection have litle as laws of the Conqueror, are but history, which the stile shews; and also some articles of Henry 1³⁷⁹ at the end of Mr. Lombard's collection. If a man pores his eys out upon all these[,] he shall not find that economy of law as wee have opened to us in Glanvile and the *Mirroir*. And that I guess, grew more out of the practis of the king's courts ordering the [f. 109v] methods of justice, as they found reasonable,³⁸⁰ till by use and time it became of cours, and was styled law.

It was necessary for the Conqueror to publish somewhat of law to stop the clamour of the clergy, (who took upon them[selves] the protection of the people and to be their intercessory) least their new king should claim (as after he did) to hold without law. And as a popular colour, the demand of laws was by the name of good King Edward,³⁸¹ the friend and pretended founder of the Conqueror, being

³⁷⁷ Baker, *An Introduction*, p. 99 n.14, conjectured that the term 'chancery' (*cancellaria*) was imported from the continent, 'probably' in the 1060s.

³⁷⁸ Missing in this text, but perhaps referring to RN's notes on 'palace' justice from the time of William I; see (UK:Lbl) Add MS 32529: ff. 109–113 ('Of fines upon originals', i.e., original writs) and ff. 113v–115v ('Of palace law'). RN's allusion to William's 'chancery' above suggests that his notes may have been written just after the publication of a tract by Robert Atkyns, *An Enquiry into the Jurisdiction of the Chancery in Causes of Equity* (London, 1695), which renewed Coke's protest against the encroachments of the court of Chancery and suggested how the common law might be restored.

³⁷⁹ Henry I (1068–1135), king of England.

³⁸⁰ According to Baker, *An Introduction*, p. 15, it was the centralisation of justice in the king's courts that made possible the common law.

³⁸¹ Edward or Eadward styled The Confessor (d. 1066), king of England, crowned 1043, who, at his court, entertained William, when duke of the Normans. His so-called laws are said to have been drawn up in 1070 from declarations made on oath by twelve men of each shire. For Hale, *The History of the Common Law*, p. 70, this form of proceeding 'appears to be as sufficient and effectual a Parliament as ever was held in England'.

that way least like to offend him. And thereupon about [the] 4 **regni*³⁸² he sent out his articles, which the clergy were glad of and *gat copys, as appears by Ingulphus,³⁸³ and carryed them as a great purchas to their monastarys. And what they are, about small items of generall law, nothing tending to declare ought but between subject and subject, so farr was he from retrenching or circumscribing his owne power. And that he exerted amply about the 12 *regni*[,] seising all the estates, and putting them under his owne survey of *feuds for his security. And declared it grace enough to the natives to live and purchas new if they were able, and such they might hold.³⁸⁴

[f. 110]

There is litle left of that age to informe us of the **primordiæ* of our laws which grew out of it, but the monkish historians, and a few **diplomata*, and that which here I thinck proper to mention[,], the *Grand Custumier of Normandy*. It is very odd, that in the Saxon and Norman constitutions extant, there is litle exprest concerning land and titles, and a world about *delicts and punishments, and as to them, about *formes of proceeding, litle but that of *ordeals. There is notice of townecourts, tythings, hundreds, and shires; whereof the latter is accounted the [court of] **dernier resort*, and in cases where the others cannot determine. And in the *Grand Custumier*, all is about jurisdictions and feudall titles, which makes me thinck that so much as was innovated in these branches was intire Norman. There wee find litle or nothing about delicts, or what wee call crowne law.³⁸⁵ So that to shew a grand distinction between the Saxon and the

³⁸² I.e., 1069.

³⁸³ Ingul [Ingulphus] (d. 1109), abbot of Crowland or Croyland and secretary to William I. The history of Crowland, attributed to him (but later discovered to be a fourteenth-century forgery), was included in the first volume of *Rerum Anglicarum scriptores veteres* (3 vols., Oxford, 1684).

³⁸⁴ I.e., the Domesday survey, completed 1086, that recorded the names of new holders of lands and the assessments on which tax was to be paid, the purpose being to ascertain and record the fiscal rights of the king. Hale, *A History of the Common Law*, pp. 70–71, gives two separate regnal years for the beginning of this survey, both different from those of RN.

³⁸⁵ I.e., the criminal law.

Norman frame, as it may be supposed to be yet *vestigiated among us, wee must look on the old *iters and all such as wee call inferior courts, as of mannors, tythings, hundreds and countys, with their jurisdiction and formes [f. 110v] to be of the Saxon model. But the Chancery³⁸⁶ and Westminster Courts,³⁸⁷ the Registrar of Writts,³⁸⁸ *Courts of Record at *Westminster [Hall]; Comissions of Oyer and Terminer, Goal Delivery, Assises, with the Office of Coroner and their appendages to be all pure Norman.³⁸⁹

In the elder times it was the use to compound all offences for mon[e]y;³⁹⁰ and it is credible that for *terror the rules were sett very high, so as ordinarily a man convict was undone. For men will goe higher in declaring penaltys for warning and prevention as what may never fall[,] then in punishing after a conviction which is forthwith and certainly inflicted. Therefore going off from these tight mulcts, to more moderated punishments, assessed by the court, those abated the rigor of the rule and were called *mercy. And such was the nature of courts of office in the country, whereof the shaddow is in our mannor, hundred and county courts. The country³⁹¹ found the guilt, and the lord with some assessors moderated the punishment. But the method of fining by judges assigned was not of that time but since the conquest.³⁹² As to the titles of land, which after the conquest

³⁸⁶ I.e., the court of the chancellor or lord keeper of the Great Seal.

³⁸⁷ I.e., the common law courts.

³⁸⁸ I.e., the officer who keeps a collection of writ formulæ called a 'register' and which contains texts of writs in Latin; see Baker, *An Introduction to English Legal History*, p. 177.

³⁸⁹ For the contribution of the Normans and their Angevin successors, beginning with the reign of Henry II, see Baker, *An Introduction*, pp. 12–36 and 502, also for historical details relating to the institutions that RN describes as 'pure Norman'.

³⁹⁰ I.e., fines (for misdemeanours).

³⁹¹ I.e., the regional courts.

³⁹² In a digression on fines both before and after the conquest, RN, *Life/FN*, p. 54, concludes: 'Whoever will be fully informed of as much in the antiquitys of the law, as there is evidence for, may consult the epistolar dissertation of the great Dr. Hicks, in his Thesaurus; and I have touched thus much of the antiquity of fines, as not amiss in the life of a comon lawyer, and one [i.e., FN] who used to urge all his

turned into *feuds, first military, and then subsidiary or mixt, the whole model of the tenures, dutys, successions and quantitys of them, are so express and agreeing with the like as was the use here [before the conquest], that no one can doubdt but the one was parent of the other.³⁹³

[f. 111]

I have here pas't over these dark times, groping at a few guesses, such as I thinck may incite students to look into the monuments of antiquity as are to be come at, serving to interprett their usages, and (if possible) to connect them by a series of direct institution, or some collaterall occasion, together with ours. Whereby it seems that there is nothing of European antiquity, *Gothick, Roman or Gallick, which is not materiall to be inspected and considered. The state of the law from Glanvile downewards[,] ³⁹⁴ upon the books and records of it, is too bulky to have room in this essay; and it must be remitted to more leisure and applycation, if not ability then I can afford to it. But doubdtless it is a noble subject, fitt for our Gotofred, if such were above ground and ever breathed in *Westminster Hall. But the infelicity of the law books of latter times is, none but the least engaged in buisness have time to apply, and those, as having less experience[,] are least fitt for it. Whereas others of greater genius and capacity are worne out with prattique[,] and in all their life have neither time nor leisure to make fitting researches and to put in wrighting their sentiments. And however they are desirous to benefit posterity that way, they cannot doe it.³⁹⁵ It were happy if such men, as are in greatest posts in the law[,] after moderate estates got, had their ease; and then the literature of the law

freinds ... that pretended to study the law, to inquire into the antiquitys of it, and observe the steps by which it is reduced to the state of their owne time'.

³⁹³ Cf. Hale, *The History of the Common Law*, pp. 83–5.

³⁹⁴ I.e., from the twelfth-century reign of Henry II to RN's time.

³⁹⁵ This and the previous two sentences almost certainly allude to FN, whose life in the law and its wearing out occupied RN over a period of nearly four decades. In the completed version, which includes several volumes of FN's notes, memoranda, etc., RN, *Life/FN*, p. 476, expresses sentiments similar to those voiced here.

might be augmented (as by my Lord Cook).³⁹⁶ [f. 111v] I must againe affirme,³⁹⁷ that none but natives of the law (I suppose I am understood) can write tollerably concerning it. Therefore if hereafter I have a motive to prosecute this cours of observing the history of the law downe to our time, I hope the indulgence will be ready, in order to excuse such defects of education and experience as may appear in it.

³⁹⁶ This sentence, which is squeezed into three lines of text at the very bottom of the leaf, does not end here with a full stop but with a comma and then continues thus: 'tho not such overgrowne estates are not got'.

³⁹⁷ MS has no previous affirmation.



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GLOSSARY

The following words, phrases, clichés and terms of art in law, English and foreign, are given in the spelling in which North first uses them followed by other forms that occur in North's text. Sayings in Latin are listed and glossed below, whereas sayings in English are listed with a 'see' reference that directs the reader to the place in the text where they occur.

<i>a fortiori</i> ; f. 53v	(Lat.) lit., from the stronger, i.e., with stronger reason
<i>acreless</i> ; f. 60v	(Northism) uncultivated; from acre: (OED <i>ppl. a.</i>) cultivated
<i>ad goalam deliberandum</i> ; f. 35v	(Lat.) of delivery to goal, i.e., gaol
<i>ad infinitum</i> ; f. 51	(Lat., OED) to infinity
<i>ad inquirendum per sacramentum proborum hominum</i> ; f. 106v	(Lat.) for the purpose of inquiry by means of a civil law suit of honest [and legal] men [<i>ad inquirendum</i> is a judicial writ commanding that an inquiry be made into some complaint]
<i>adversarii ... dubii</i> ; f. 91v	(Lat.) opposed ... doubtful
<i>Alcoran</i> ; ff. 87v, 95v	(OED, arch.) the sacred book of Mohammedans, the Koran (which is now the usual form)
<i>all is not gold that glisters</i>	see f. 86v
<i>an etimologicon in time, is worth forty, when time is past</i>	see f. 93v
<i>anomala</i> ; ff. 27v, 47v	(OED <i>sb.</i> , obs.) irregularities
<i>appellative</i> ; f. 106v	(Northism) = appellant: (OED <i>a.</i> 2, in law) as regards appeals; appellate
<i>arrantest</i> ; f. 8	(OED <i>a.</i> 5, obs.) most rascally, good for nothing, thoroughly bad
<i>artificiall</i> ; ff. 50, 50v	(OED <i>a.</i> II.6, obs.) skilfully made

<i>artigliery</i> ; f. 9	(OED <i>sb.</i> 1, obs.) ammunition in the wide sense
<i>as fast as hopps</i>	see <i>hopps</i>
<i>assises</i> , i.e., assizes; f. 89	(M&W, in law, from Lat. <i>assideo</i> : to sit together) in ancient usage, the juries who were summoned by writ of assize and who tried the cause and sat together for that purpose [for modern usage, see n.343 to f. 104v]
<i>barbare, barbares</i> ; ff. 15, 26v, 54	(Fr.) barbarian, barbarians
<i>behoves</i> ; f. 98v	(OED <i>v.</i> 1, obs.) requires
<i>bellum internecinum</i> ; f. 61	(Lat.) a war of mutual destruction
<i>by tale and not [by] weight</i>	see f. 54v
<i>cadees</i> ; ff. 95v, 96	(OED, obs. form) <i>cadis</i> ; civil judges among the Turks who made general decisions and administered the law subject to moral and religious supervision of the <i>ulema</i> and <i>mufti</i> (q.v.) and the secular authority of the sultan
<i>cart-blanch</i> , i.e., <i>carte blanche</i> ; f. 23v	(Fr.) white paper; see also f. 36v
<i>casus pro amico</i> ; f. 91v	(Lat.) a case in service of a friend
<i>chaque en son gout</i> , i.e., <i>chacun à son goût</i> ; f. 54	(Fr.) each to his own taste
<i>chicane</i> ; f. 99v	(OED <i>sb.</i> 2, obs.) subterfuge
<i>chicaneurs</i> ; f. 18	(Fr.) chicaners; shifty men
<i>chicaneus</i> ; f. 94v	(Northism) = chicaning: (OED <i>ppl. a.</i>) quibbling
<i>civility</i> ; ff. 20, 53v	(OED II.11, obs.) culture, refinement
<i>comfort</i> ; f. 12v	(OED <i>sb.</i> 3, obs.) pleasure, delight
<i>comfort</i> ; f. 105	(OED <i>sb.</i> 1, obs.) succour, support
<i>company</i> ; ff. 52v, 62, 106	(OED <i>sb.</i> 3c, obs.) great number
<i>compotes of</i> ; f. 37v	(Fr.) fruit salads, ragouts, i.e., composites: (OED 1b, rare with of) composed of
<i>con pie di pianto</i> ; f. 48	(It.) with leaden feet
<i>concept</i> , <i>concepts</i> , i.e., conceit, conceits; ff. 5, 30, 31	(OED <i>sb.</i> I.1, obs.) conception, notion, thought
<i>concept</i> , i.e., conceit; f. 7	(OED <i>sb.</i> II.4b, obs.) opinion
<i>concept</i> , i.e., conceit; f. 93	(OED I.1c, obs.) concept

<i>conceipted</i> , i.e., conceited; f. 42	(OED <i>v.</i> 1, obs.) formed a conception or notion, conceived
<i>concepts</i> , i.e., conceits; f. 6	(OED <i>sb.</i> III.7) fanciful notions; whims
<i>conclamatum est</i> ; f. 36v	(Lat.) it's all over [from the cry raised at the moment of death by ancient Romans standing round a death-bed]
<i>concreate</i> ; f. 50v	(OED <i>a.</i> , obs.) created together; coeval in creation
<i>con-radicality</i> ; f. 35v	(Northism) = co-radicate: (OED <i>a.</i> , in etymology, 1882) having the same root
<i>construction</i> ; f. 39	(OED II.7) the construing or interpreting of a statement; but here, an opinion
<i>construction</i> ; ff. 87v, 88	(OED II.9b, in law) a particular explanation or interpretation put upon a law
<i>contract</i> ; ff. 33, 49v	(OED <i>v.</i> III.9d, obs.) abridge, abbreviate
<i>contract</i> ; f. 99	(OED <i>v.</i> I.1, rare) establish by agreement
<i>contracted</i> ; f. 32	(OED <i>ppl. a.</i> 5c, obs.) restricted
<i>contracting</i> ; f. 24	(OED <i>vbl. sb.</i> from <i>v.</i> III.9, obs.) abridging, abbreviating
<i>contrainant</i> ; f. 108v	(Northism) = constrainable: (OED <i>a.</i> , rare) liable to constraint
<i>convention</i> ; f. 97v	(OED II.7b) an agreement creating legal relations
<i>conventuall</i> , i.e., conventual; f. 97	(OED <i>a.</i> , obs.) pertaining to an assembly
<i>corone</i> ; f. 24	(OED obs. form) corona, crown
<i>court, courts of record</i> ; ff. 87, 110v	(M&W, in law) a court whose acts and judicial proceedings are enrolled for perpetual memorial and testimony and whose rolls are the records of the court
<i>crisis</i> ; f. 64	(OED 4, obs.) judgment, decision
<i>cujus contrarium verum est</i> ; f. 58	(Lat.) of which the opposite is true
<i>culmen</i> ; f. 18	(OED 1, obs.) summit
<i>delicts</i> ; f. 110	(OED, RN ex.) violations of law or right; offences
<i>dernier resort</i> , i.e., <i>dernier resort</i> ; ff. 96, 110	(Fr.) last resort
<i>diplomata</i> ; f. 110	(Lat.) official letters

<i>discretion</i> ; ff. 7, 11, 17, 39, 49 62v	(OED II.3, obs.) discernment; judgment [see <i>infra</i> Appendix B: [NORTH] 1714, p. 6: 'common Discretion ... is a sort of Law to every one']
<i>disevidenced</i> ; f. 101	(Northism) deprived of evidence
<i>disprejudiced</i> ; ff. 56v, 58, 61v	(Northism as <i>a.</i>) unbiased, from disprejudice (OED <i>v.</i> , rare) free from prejudice
<i>durty</i> ; f. 43	(OED obs. form) dirty = (OED <i>a.</i> 5, of colour) tinged with what destroys clearness
<i>eclarissement</i> , i.e., <i>éclaircisse- ment</i> ; f. 24v	(Fr.) elucidation, light
<i>edicta prætorum</i> ; ff. 86v, 91	(Lat.) lit., edicts of the prætors, i.e., declarations of judicial procedure of the higher magistrates at Rome
<i>eimī</i> ; f. 5v	(Gk.) to be; I am
<i>eiusdem farinæ</i> ; f. 40v	(Lat.) lit., of the same flour, i.e., of the same quality or character
<i>ejectment</i> , <i>ejectments</i> ; ff. 87, 89	(Baker, in law) a personal action that allowed a copyholder's lessee to recover land if title was established
<i>enervous</i> ; f. 60v	(OED <i>a.</i> , obs., RN ex.) bereft of nerve or strength, powerless
<i>engineers</i> ; f. 60v	(OED <i>sb.</i> 1, obs.) plotters, layers of snares
<i>entreprenant</i> , i.e., <i>entrepreignant</i> ; f. 18	(OED <i>a.</i> , obs.) enterprising
<i>epocha</i> ; ff. 101v, 102	(Lat.) fixed point of time
'ere, i.e., e're; f. 24	(OED, obs. form) ever
<i>essoines</i> , i.e., <i>essoins</i> ; f. 89	(OED <i>sb.</i> , in law) excuses or allegations of an excuse for non-appearance in court at the appointed time
<i>estates</i> ; f. 65	(OED <i>sb.</i> 3, arch.) status, standing, position in the world
<i>et ruat cælum ... ut ruat celum</i> , i.e., <i>et ruat cælum ... ut ruat cælum</i> ; f. 66v	(Lat. proverb) and if the sky falls down ... let it fall
<i>etimologiser</i> ; ff. 11v, 23	(Northism) = etymologist: (OED) one who searches into the history and origin of words

<i>ex autoritate ... nobile officium iudicis</i> ; f. 87v	(Lat.) from the authority ... the noble office of the judge
<i>ex diametro</i> ; f. 85v	(Lat.) lit., in an exact line, i.e., directly
<i>fac simile</i> ; f. 43v	(OED <i>sb.</i> 1, obs.) making a copy of anything, especially writing
<i>fact</i> ; f. 58v	(OED 1c, obs.) an evil deed, crime
<i>Fari ut possit quæ sentiat</i> ; f. 30v	(Lat., Horace) to be able to speak what he may think
<i>fascinorous</i> , i.e. facinorous; ff. 7, 86	(OED <i>a.</i> , obs.) extremely wicked, vile
<i>fastidious</i> ; ff. 23v, 36, 38v, 43v, 50	(OED <i>a.</i> 1, obs.) disagreeable, distasteful
<i>fatuate</i> , i.e., fatuate; f. 7	(OED <i>ppl. a.</i> , obs.) foolish, silly
<i>feuds</i> , i.e., fees; ff. 109v, 110v	(OED = fees <i>sb.</i> ²¹ , in feudal law) an estate in land—in England always a heritable estate—held on condition of homage and service to a superior lord, by whom it is granted and in whom the ownership remains; a fief, feudal benefice
<i>fine</i> , i.e., final concord; f. 108v	(Baker, in law) a legal fiction used to transfer ('alien') title to land [for specimens of the instruments and for explanations how they were enforced, see Hall (tr.), <i>The Treatise ... called Glanvill</i>]
<i>fitts and girds</i> ; f. 48v	(OED <i>sb.</i> ² 4c, obs. exc. dial.) in spasms and jerks
<i>flagrante bello</i> ; f. 61	(Lat.) while the war is raging
<i>flirt</i> ; f. 38	(OED <i>v.</i> 6, obs.) to flit inconstantly from one object to another; but here, from one subject matter to another
<i>foppery</i> ; f. 11	(OED 1b, obs.) foolish practices
<i>fopps</i> , i.e., fops; f. 8	(OED <i>sb.</i> 2, obs.) pretenders to wit
<i>formalists</i> ; f. 89	(OED 4, obs.) authorities on legal forms
<i>formalizing upon</i> ; f. 97	(OED <i>v. intrans.</i> 7b, obs., RN ex.) haggling over
<i>formed</i> ; f. 53	(OED <i>ppl. a.</i> 2a, obs.) drawn up according to rule; formal

<i>formes</i> , i.e., forms; ff. 48v, 54, 54v, 55, 110	(OED <i>sb.</i> I.12) a set or fixed order of words, as in a customary legal method of drawing up a writing or document
<i>formes</i> , i.e., forms; f. 55	(OED <i>sb.</i> 7, obs.) examples, models
<i>foyles</i> , i.e., foils; f. 52v	(OED <i>sb.</i> ² 1, obs.) in wrestling, the fact of being almost thrown; a throw not resulting in a flat fall
<i>fretted</i> ; f. 36	(OED <i>ppl.</i> <i>a.</i> ² of <i>v.</i> ¹ 7, obs.) worn, decayed
<i>frustra fit per plura qua fieri potest per paciora</i> ; f. 29v	(Lat.) that is idly done by many which may be done by a few
<i>gallimaufry</i> ; ff. 39v, 91	(OED 5. <i>attrib.</i> , RN ex.) miscellaneous
<i>gat</i> ; f. 109v	(OED, arch. form) got
<i>Gothick</i> , i.e., Gothic; ff. 35v, 41v, 52, 84, 92, 106v, 108v, 111	(OED <i>a.</i> 2, obs.) Teutonic, Germanic
<i>Gothick writing</i> , i.e., Gothic writing; f. 43v	(OED <i>a.</i> 5) some kind of written character; but here, probably 'black letter English' or 'German Gothic', a highly decorative script popular in Western Europe in the twelfth century
<i>goust</i> , i.e., goût; f. 33	(Fr.) taste
<i>grand mond</i> , i.e., <i>grand monde</i> ; f. 6v	(Fr.) great world of fashionable persons, high society
<i>grant</i> , <i>grants</i> ; f. 97v	(M&W, in law) in ancient usage, an implied warranty of title
<i>homo homini lupus</i> ; f. 59	(Lat., Erasmus) man is a wolf to other men
<i>hopps</i> , i.e., hops, <i>as fast as</i> ; f. 86v	(Northism, as a phrase) referring either to the hop-plant, when grown in rows, or to their crowded catkins of flowers
<i>hostel-de-ville</i> , i.e., <i>hôtel de ville</i> ; f. 17v	(Fr.) town hall
<i>humanity</i> ; f. 19v	(OED II.3a, obs.) civility = (OED I.5, obs.) polity, civil organisation and government
<i>humanum est irasci ... errare</i> ; ff. 94v–95	(Lat.) it is the lot of human nature to get angry ... to err
<i>humour</i> ; f. 63	(OED II.5c, rare) excited state of public feeling
<i>humour</i> ; f. 102v	(OED II.5b, obs.) habitual frame of mind
<i>impolite</i> ; ff. 53, 55v	(OED <i>a.</i> 2, obs.) unpolished, rude, wanting in refinement

<i>importune</i> ; f. 16v	(OED <i>a.</i> 3, obs.) pressing, urgent; busy
<i>impunely</i> ; f. 10v	(OED <i>adv.</i> , obs.) with impunity, without punishment
<i>in a trice</i>	see <i>trice</i>
<i>in foro conscientiae</i> ; f. 59v	(Lat.) in the forum of conscience
<i>in hipotesi</i> , i.e., <i>in hypothesi</i> ; f. 95v	(Lat.) by supposition
<i>in scriptis</i> ; f. 88	(Lat.) in writing
<i>in tanto</i> ; ff. 54v, 96v	(It.) by so much
<i>in terminis terminantibus</i> ; f. 34v	(Lat.) in exact or determinative boundaries
<i>in terrorem</i> ; f. 99	(Lat.) as a warning, for the purpose of intimidation
<i>in the 'rere</i>	see <i>'rere</i>
<i>incoersible</i> , i.e., <i>incoercible</i> ; f. 66	(OED <i>a.</i> 1, 1756) irrepressible
<i>incommendable</i> ; f. 7	(OED <i>a.</i> , obs.) not commendable or praiseworthy
<i>inconveniences, inconvenience</i> ; ff. 65v, 99v	(OED <i>sb.</i> 3, obs.) misfortune, trouble
<i>inconveniences</i> ; ff. 84v, 85v, 88	(OED <i>sb.</i> 1, obs.) inconsistency with reasons or rules, an absurdity
<i>inconvenient</i> ; f. 88	(OED <i>sb.</i> B.1, obs.) something inconsistent with reason, an absurdity
<i>indenizing</i> ; f. 30	(Northism) naturalising; from <i>denize</i> : (OED <i>v.</i> 2, <i>fig.</i> , obs.) to admit into recognised use
<i>indifference</i> ; ff. 9, 84v	(OED 4, obs.) the quality of being neither decidedly good nor evil
<i>indifferent</i> ; f. 8v	(OED <i>sb.</i> B.3 <i>pl.</i> , rare) things indifferent, non-essentials
<i>iniquitable</i> ; f. 100	(OED <i>a.</i> , obs.) unjust, iniquitous
<i>iniquity</i> ; ff. 85v, 86v	(OED 2, obs.) want of equity; injustice; unfairness
<i>injust</i> ; ff. 8v, 62v, 67	(OED <i>a.</i> , obs.) not just
<i>inquire</i> ; f. 34v	(OED <i>v.</i> 6, obs.) to seek, search, find (out)
<i>inquisited</i> ; f. 23	(OED <i>v.</i> , obs.) to investigate, examine, inquire into
<i>insincerity</i> ; f. 86v	(OED 1, obs.) want of purity, corruption
<i>instar omnium</i> ; f. 51	(Lat., Cicero) worth them all

<i>intemerated</i> ; f. 87	(OED <i>a.</i> , obs.) undefiled
<i>interlocutory accord</i> ; f. 108v	(Northism) = interlocutory (OED <i>a.</i> , in law) + accord (OED 1b, obs.) a private or extra-judicial agreement pronounced during the course of an action
<i>iter ... justice</i> ; f. 106v	(Northism as <i>a.</i>) circuit, i.e., the journey of judges through certain appointed areas, for the purpose of holding assizes (q.v.)
<i>iters</i> ; f. 110	(OED <i>sb.</i> 1b) the record of proceedings during a circuit
<i>Je ne scay quois</i> , i.e., <i>Je ne sais quoi</i> ; f. 34	(Fr.) I know not what; <i>see also</i> f. 37v
<i>joynt</i> , i.e., joint, <i>out of</i> ; ff. 39, 49v	(OED <i>sb.</i> 2b) out of order
<i>jura per pagos</i> ; f. 55v	(Lat., Tacitus) justice through the villages [(UK:Lbl) Add MS 32529: f. 134 has: ' <i>quod reddunt jura per pagos</i> '—who restore justice through the country districts and villages]
<i>jurisperite</i> ; ff. 54, 92v, 95	(Northism) jurisperit; from <i>jurisperitus</i> : (Lat.) having knowledge of the law
<i>jus gentium</i> ; f. 93v	(Lat.) lit., the law of peoples, i.e., the law of nations
<i>just</i> ; f. 27v	(OED <i>a.</i> 10, obs.) equal
<i>keep the keepers</i>	<i>see</i> f. 88v
<i>legislative</i> ; ff. 66, 85, 88	(OED <i>sb.</i> B.1, rare) the power of legislating or making laws; the body in which this power is rested, the legislature
<i>legislature</i> ; ff. 54, 97v, 99	(OED 2, obs., RN ex.) the exercise of the function or power of legislation
<i>letter</i> ; ff. 20v, 98v	(OED <i>sb.</i> ¹ II.3a <i>sing.</i> , obs.) written text
<i>levigated</i> ; f. 17v	(OED <i>ppl.</i> <i>a.</i> 1, obs.) made smooth
<i>lively</i> ; f. 29	(OED <i>a.</i> 1, obs.) living, animate
<i>loos</i> ; f. 62v	(OED <i>a.</i> A.5d, obs.) unsettled
<i>lottery</i> ; f. 54v	(OED 2, obs.) decision by casting or drawing of lots, i.e., by chance
<i>lotts</i> , i.e., lots; f. 63	(OED <i>sb.</i> 1g, obs.) an object, usually a piece of wood, used in a widely diffused ancient method of deciding disputes; but here, divinatory appeals to chance

<i>magistracys</i> , i.e., magistracies, <i>magistracy</i> ; ff. 55, 63, 63v, 105v	(OED 1, obs.) the existence of magistrates
<i>Magna est veritas & prævalebit</i> ; f. 5	(Lat. maxim) the truth is most powerful and will ultimately prevail
<i>mala in se</i> ; f. 88v	(Lat.) lit., evils in themselves, i.e., transgressions against natural law
<i>mala prohibita</i> ; f. 88v	(Lat.) lit., forbidden evils, i.e., transgressions against human law
<i>manages</i> ; f. 17v	(OED <i>sb.</i> 5c, obs.) administrative duties or offices
<i>mansuete</i> ; f. 105	(OED <i>a.</i> , obs.) mild, tame
<i>mercy</i> ; f. 110v	(OED 1c, obs.) in Norman and Angevin times, the convict's person was at the king's mercy, a notion that gave the king's justices discretion to order mutilation (e.g., castration or blinding) instead of death by hanging, the usual punishment for felonies
<i>mis-appropos</i> ; f. 93	(Northism) = misappropriate: (OED <i>a.</i> , rare) inappropriate
<i>mischief</i> ; ff. 16v, 61, 65	(OED <i>sb.</i> 6, obs.) evil-doing, wickedness
<i>mischiefs</i> ; ff. 84, 94v	(OED <i>sb.</i> 3, in law) a condition in which a person suffers wrong or is under some disability, especially one which it is the object of a statute to remove or for which equity affords a remedy
<i>mischievous</i> ; ff. 85v, 95	(OED <i>a.</i> 1, obs.) calamitous
<i>mise</i> ; f. 102	(OED <i>sb.</i> 4, in law) the issue in a writ of right (q.v.)
<i>modest</i> ; ff. 15, 16v, 31v	(OED <i>a.</i> 1, obs.) well-conducted, orderly, not dominant
<i>modesty</i> ; f. 11	(OED 1, obs.) moderation, freedom from excess, self-control
<i>moll</i> ; f. 42v	(Northism) mute; from (OED <i>a.</i> , obs.) soft
<i>mordicitus</i> ; f. 55v	(Lat.) lit., with the teeth, i.e., doggedly
<i>mufty</i> , i.e., mufti; ff. 9, 96	(OED) expounder of the law; in Turkey, restricted to the official head of the religion of the state and to deputies appointed by him in some of the larger cities

<i>new broomes/brooms sweep clean</i>	see ff. 65v, 107v
<i>newfanglements</i> ; f. 44	(OED, 1798) novelties; novel things
<i>Noachides</i> ; f. 51v	(OED, 1856) descendants of Noah
<i>nose of wax</i> ; f. 95v	(OED <i>sb.</i> 4) a thing easily turned or moulded in any way desired
<i>Nota bene</i> ; f. 10v	(Lat.) Note well
<i>nubigenall</i> ; ff. 53, 57, 57v	(Northism) imaginary, unreal; from <i>nubigena</i> : (Lat., Ovid) lit., born of the clouds, like the offspring (centaurs) of Ixion and a cloud
<i>nubilar</i> ; f. 56v	(Northism) unreal; from <i>nubilate</i> : (OED <i>ppl. a.</i> , obs.) clouded
<i>nullity</i> ; f. 58v	(OED 1) the fact of being legally null and void; invalidity
<i>obnoxious</i> ; f. 86v	(OED <i>a.</i> 5, obs.) injurious
<i>obnoxious</i> ; f. 99	(OED <i>a.</i> 3, obs.) submissive (to some authority)
<i>obnoxious to</i> ; ff. 38v, 84v, 90, 98v	(OED <i>a.</i> 1b, obs.) liable to
<i>obsoleted</i> ; f. 86	(OED <i>v.</i> , rare) disused, discarded
<i>obsoletion</i> ; f. 92v	(OED, rare, 1804) the condition of becoming obsolete
<i>on the tenters</i>	see <i>tenters</i>
<i>ordeals</i> ; f. 110	(Baker, in law); ancient modes of proof among Teutonic peoples, retained in England until after the Norman period, in which an accused or suspected person was subjected to some physical test (e.g., fire, water), the result being regarded as the immediate judgment of the deity
<i>out of joynt</i>	see <i>joynt</i>
<i>paisons</i> (MS has 'saisons'), i.e., <i>paysans</i> ; f. 104	(Fr.) lit., the peasantry; but here, rustics
<i>palatinè</i> , i.e., <i>palatine</i> ; f. 104v	(OED <i>a.</i> ¹ A.II.4, obs.) the territory ruled by a palatine or palace; e.g., the counties of Chester, Durham and Lancaster, in which the owners of the palaces had royal rights as fully as the king in his palace

<i>parte inaudita alteræ</i> ; f. 98v	(Lat.) one side without a hearing in court
<i>passages</i> ; f. 10v	(OED <i>sb.</i> III.13, obs. or arch.) incidents
<i>past</i> ; f. 95	(OED <i>prep.</i> 4c, rare) beyond (in manner or degree)
<i>patch</i> ; f. 95	(Anglicised form) from <i>pazza</i> : (It.) fool
<i>perdue</i> ; f. 95	(OED <i>a.</i> , RN 1st ex.) lying hidden; hidden, concealed; disguised
<i>petit</i> ; f. 105v	(OED <i>a.</i> 3, obs.) minor
<i>philautians</i> ; f. 57v	(Northism as <i>sb.</i>) self-interested persons; either from <i>philautia</i> : (Gk.) or from <i>philauty</i> : (OED, obs.) undue regard for oneself or one's own interests
<i>philolethes</i> ; f. 12	(Gk.) lovers of truth
<i>piquant</i> ; f. 17	(OED <i>a.</i> 1, obs. or arch.) sharp, stinging, severe, trenchant
<i>plebiscita</i> ; f. 91	(Lat.) plebiscites, i.e., laws enacted by the ancient Roman assembly (<i>comitia</i>) of tribes; <i>see also</i> f. 98
<i>policy</i> ; ff. 21, 53, 64v, 84, 90, 96, 102v	(OED <i>sb.</i> ¹ I.1, obs.) an organised and established system of government; a polity, constitution
<i>post-nate, postnate</i> ; ff. 22v, 101	(OED <i>a.</i> , obs.) subsequent
<i>pragmaticall</i> , i.e., <i>pragmatical</i> ; f. 53v	(OED <i>a.</i> 3, obs.) energetic
<i>pravity</i> ; f. 51v	(OED 1, obs.) moral perversion or corruption, wickedness
<i>prescription, prescriptions</i> ; f. 97v	(M&W, in law) the presumption of a grant arising from long personal usage
<i>president, presidents</i> , i.e., precedent, precedents; ff. 84v, 85v, 86, 86v, 88	(OED <i>sb.</i> 2b, in law) a previous judicial decision, method or proceeding, or draft of a document, which serves as an authoritative rule or pattern in similar or analogous cases
<i>primordiæ</i> ; ff. 108, 110	(Lat.) origins, beginnings
<i>pro ... con</i> ; f. 10v	(Lat.) for ... against (<i>con</i> = contraction of <i>contra</i>), i.e., the pros and cons of a matter are all that can be said for or against it
<i>pro lesä fide</i> , i.e., <i>pro læsæ fide</i> ; f. 107	(Lat.) for breach of faith

<i>pro salute animæ</i> ; f. 85	(Lat.) for the health of the soul
<i>profit apprender</i> , i.e., <i>profit à prendre</i> ; f. 97v	(Fr.) a right to take a portion of the soil or the produce of the soil of another
<i>punk-dialogue</i> ; f. 6v	(OED <i>sb.</i> ¹ , obs.) punk = strumpet with the implication of toy, hence, toy-dialogue
<i>purblind</i> ; f. 24v	(OED <i>a.</i> , obs.) totally blind
<i>purchase</i> ; f. 6v	(OED <i>v.</i> II.4 <i>trans.</i> , obs.) to procure for oneself
<i>quantum mutatus ab illo</i> ; ff. 87, 100v	(Lat., Virgil) how much changed from that
<i>radix</i> ; f. 5v	(OED 4, obs., in philology) an original word or form from which other words are derived
<i>rage</i> ; f. 107	(OED <i>sb.</i> 3a, obs.) violent action; but here, conquest and occupation
<i>rallieur</i> , i.e., <i>raillieur</i> , <i>raillieurs</i> ; ff. 17, 46	(OED, obs.) those who practice raillery, i.e., (OED 2, obs.) reviling
<i>reall actions</i> , i.e., real actions; f. 87	(Baker, in law) actions relating specifically to immovable property or real estate
<i>regni</i> ; f. 110	(Lat.) regnal year
<i>regulâ juris</i> , i.e., <i>regulæ juris</i> ; f. 106	(Lat.) rules of law; but here, civil laws (<i>juris civilis</i>)
<i>reliquiæ</i> ; f. 107	(Lat.) remnants
<i>republican</i> ; f. 63v	(OED <i>a.</i> A.1, obs.) belonging to the commonwealth or community
<i>republican</i> ; ff. 64, 66	(OED <i>a.</i> A.2b, 1793) of persons or parties, advocating the form of government called a republic
<i>repute</i> ; ff. 32v, 40	(OED <i>sb.</i> 1b, obs.) the reputation of being (or having) something
<i>'rere</i> , in <i>the</i> , i.e., in the <i>arrere</i> ; f. 35	(OED, obs. form) in the rear or hindmost part
<i>res integra</i> ; f. 84v	(Lat.) undecided
<i>responsa prudentum</i> ; f. 91	(Lat.) lit., judicious answers, i.e., answers of jurists to questions submitted to them
<i>rope of sand</i> , <i>twine of sand</i> ; ff. 56, 60v	(OED II.5b) something having no coherence or binding power; <i>see also</i> f. 53
<i>rule the roast</i>	<i>see</i> f. 39

<i>sabinically</i> ; f. 46	(Northism as <i>a.</i>) conceitedly; from Sabine: (OED B.b, <i>transf.</i>) conceited persons, in allusion to the proverb <i>Sabini quod volunt somniant</i> : (Lat., Festus) the Sabines dream what they will
<i>salvo</i> ; f. 10	(OED <i>sb.</i> ² 6 <i>transf.</i> , RN 1st ex.) a volley of applause
<i>salvo</i> ; f. 60	(OED <i>sb.</i> ¹ 3, obs.) solution or explanation (of a difficulty), answer (to an objection)
<i>scantlings</i> ; f. 53v	(OED <i>sb.</i> 6, obs.) samples, specimens, patterns
<i>scepticise</i> ; f. 51	(OED <i>v. intr.</i> , 1698) to play the sceptic
<i>scryas, hundredus, tythingus</i> ; f. 106v	(Old Engl.) shire, hundred, tithing; <i>see also</i> ff. 110, 110v
<i>secundum quantitatem delicti ...</i> <i>qualitatem personæ</i> ; f. 88	(Lat.) according to the quantity of transgressions ... the quality of persons
<i>sede vacante</i> ; f. 18v	(Lat.) vacant see or seat; but here, throne of an archbishop
<i>senatus consulta</i> ; f. 91	(Lat.) lit., senatus consults, i.e., decrees of the senate of ancient Rome; <i>see also</i> f. 99
<i>senex</i> ; f. 6	(Lat.) old person
<i>sense</i> ; f. 31v	(OED <i>sb.</i> I.10b, obs.) the mental faculty in its normal condition; one's wit or reason
<i>serve, serves the turne</i>	<i>see turne to be served</i>
<i>sincerity</i> ; ff. 63, 63v	(OED 1, obs.) freedom from adulteration; but here, morally uncorrupted
<i>solemn-formes</i>	<i>see formes</i>
<i>solute</i> ; f. 47v	(OED <i>ppl. a.</i> 3, obs.) free, loose, discursive
<i>sortments</i> ; f. 12v	(OED 1c, obs.) kinds, classes
<i>speculum Walliæ</i> ; f. 104v	(Lat.) mirror of Wales
<i>stager</i> ; f. 31v	(OED 2, obs.) one who has attained a definite stage or rank in his profession
<i>start</i> ; f. 38	(Northism as <i>v.</i>) digress; from start: (OED <i>sb.</i> 7, obs.) a deviation or digression
<i>starts</i> ; f. 48v	(OED <i>sb.</i> ² 4b) by starts; intermittently
<i>states, state</i> ; f. 84	(OED <i>sb.</i> IV.28, obs.) forms or form of government and constitution established in a country

<i>status naturæ est status belli</i> ; f. 58	(Lat., Hobbes) the state of nature is a state of war
<i>statute, statutes</i> ; ff. 54, 88, 89, 89v, 97v, 98v, 99, 104	(M&W, in law) in the ancient sense, the legislation of a session, the various acts of parliament passed in it being so many chapters of the entire statute; in the modern sense, a chapter of legislation or what otherwise is called an act of parliament
<i>statutes</i> ; f. 84	(OED <i>sb.</i> I.1, obs. in general sense) positive laws, laws made by a legislative authority [‘the Positive Laws of all Places are Statutes’; Hobbes, <i>A Dialogue</i> , p. 69]
<i>sticklers</i> ; f. 94v	(OED 2, obs.) partisans
<i>suspensions</i> ; f. 63v	(OED I.1b, obs.) the state of being temporarily kept from doing, or deprived of something
<i>swinger</i> ; f. 109	(OED <i>swinger</i> ² 2, slang) whopper
<i>tale</i> ; f. 54v	(OED <i>sb.</i> 8, obs.) a reckoning of numbers
<i>talent</i> ; f. 31v	(OED <i>sb.</i> II.2, obs.) inclination, desire, appetite
<i>tenters, on the</i> ; f. 47	(OED <i>v.</i> 3b, obs.) to be in a position of strain, difficulty, or uneasiness; to be in a state of anxious suspense
<i>terror</i> ; f. 110v	(M&W, in law) a condition which the law will not enforce is so called
<i>the father to the bow, i.e., bough, and the son to the plow, i.e., plough</i>	see f. 103v
<i>the play is scarce worth the candle</i>	see f. 25
<i>theologues</i> ; f. 46v	(OED 1, rare) theologians
<i>there seldome comes a better tokens</i> ; f. 87	see f. 65v (OED 3b, obs.) something remaining as evidence of what formerly existed; a vestige, trace, ‘sign’
<i>toto celo, i.e., toto cælo</i> ; f. 24v	(Lat.) lit., by the whole expanse of the heavens, i.e., totally
<i>tractatuli</i> ; f. 38	(Lat.) little treatises
<i>traducally, i.e., traducially</i> ; f. 20	(Northism) hereditarily; from traduce: (OED <i>v.</i> 2, obs.) to pass on or transmit to offspring especially by generation

- trice, in a*; f. 9v
trick; f. 108v
tryall by battel, i.e., trial by battle; ff. 87, 102
turne, i.e., turn; f. 32v
turne to be served; ff. 27v, 36v, 37, 39, 39v, 48v, 86
turnes, i.e., turns; f. 47
turnpenny
twelve tables; ff. 86, 91
twine of sand
un bibliotheque renversee, i.e., *un bibliothèque renversée*; f. 14
vanity; f. 9
vanity; f. 10v
verdit; f. 52
verdit; f. 102v
vestigated; f. 110
vestigii; f. 11
vicinage; ff. 52, 84, 87
- (OED *sb.*² 1c, obs.) without delay
(OED *sb.*, 6 *concr.* a, obs.) a clever contrivance; but here, a legal fiction
(Baker, in law) a method of proof, introduced into England at the time of the Norman conquest, in which a challenge by the defendant decided guilt or innocence by single combat (it was abolished in 1818)
(OED *sb.* VI.32) a modification of phraseology for a particular effect of style or expression
(OED *sb.* V.30b, arch.) to answer (one's) purpose or requirement
(OED *sb.* VI.31) style of language
see f. 65v
(in Roman law) *lex duodecim tabularum*, the earliest code of Roman civil and criminal law
see *rope of sand*
(Fr.) a reversed bookcase
(OED 5, obs.) inanity
(OED 3n, obs.) the quality of holding foolish or erroneous opinions
(OED, obs. form = verdict: OED *sb.* 2) a decision or opinion pronounced upon some matter, a finding, conclusion or judgment
(OED, obs. form = verdict: OED *sb.* 1, in law) the decision of a jury in a civil or criminal cause upon an issue which has been submitted to their judgment
(Northism) indicated; from *vestigium*, pl. *vestigia*: (OED, obs.) a vestige or trace, a mark or indication left by something lost, destroyed or no longer present
(Lat.) footsteps
(OED) lit., neighbourhood or persons living in proximity; but here (Northism) the procedure of adjudication used in communal village assemblies of the Angles and Saxons

<i>villain</i> ; f. 87	(M&W, in law) a person of servile degree, of which there were two sorts: (1) a villain in gross, i.e., bound to the person of the lord and his heirs, was transferable ('alienable') by deed from one owner to another; (2) a villain regardant, i.e., belonging and annexed to a manor, was bound to the lord
<i>villanage</i> ; f. 87	(M&W, in law) the condition of a villain (q.v.)
<i>viperous</i> ; f. 60v	(OED <i>a.</i> 3, rare) malignant
<i>volvent</i> ; f. 86v	(Northism) revolving; from <i>volve</i> : (OED <i>v.</i> 1, obs.) to roll
<i>Vtile dulci</i> , i.e., <i>Utile dulci</i> ; f. 39	(Lat., Horace) the useful with the pleasant
<i>vulgar</i> ; ff. 15, 98	(OED <i>sb.</i> 2b, <i>pl.</i> 1763) persons not reckoned as belonging to good society
<i>Westminster Hall</i> ; ff. 34v, 87v, 110v, 111	(Baker, in law) a hall in the Palace of Westminster, built c.1099, in which the common law courts sat until 1882
<i>will they nill they</i> ; f. 54	willing or not, from <i>nolens volens</i> : (Lat.) willy-nilly
<i>witty</i> ; f. 18v	(OED <i>a.</i> 5, obs.) clever (in discourse or expression)
<i>woman covert</i> , i.e., <i>feme covert</i> ; f. 108v	(Baker, in law) the condition of a woman during her married life, when she is under the cover, authority or protection of her husband
<i>writt</i> , <i>writts of right</i> , i.e., writ, writs of right; ff. 89, 102, 109, 110v	(M&W, in law) a class of writ for asserting the right to lands, the mode of proof being trial by battle (q.v.)

APPENDICES

INTRODUCTION

The three appendices that follow concern the contents in the companion volume to 'Of Etymology' (Appendix A); the writings published during North's lifetime (Appendix B); and the writings published posthumously before 1900 (Appendix C). These appendices also serve as a supplement to Part I of this study by providing some additional information about events in North's life, his activities as a writer, his pattern of thought and the reception of some of his writings. However, one twenty-six page pamphlet requires mention in this place, because it sometimes has been attributed to North as well as to the divine Edward Fowler.

The pamphlet in question was published in 1691 with the title, *The Loyal Martyr Vindicated*. It concerns a paper by John Ashton,¹ who was arrested in 1690 for conspiracy to restore James II. He was convicted and executed at Tyburn in 1691. His paper, which had been delivered to the sheriff at the place of execution, was included in a pamphlet published anonymously but written by Fowler, whose purpose was to refute Ashton's paper. Fowler's refutation was then answered by the anonymous author of *The Loyal Martyr Vindicated*, who revealed a few details about himself, including that he had lived in a house in Pall Mall before the Restoration of Charles II in 1660. Since North was born in 1651 and since he never lived in a house in Pall Mall, neither he nor Fowler could have been the author of *The Loyal Martyr Vindicated*.

Misattribution to North may have been due to a serendipitous event in 1690,² when he and his brother Dudley dined at the Temple

¹ Ashton was clerk of the closet to Mary of Modena, wife of James II.

² The event is detailed in a version of the life of DN (3); see ff. 169–170 in RN, Untitled (UK:Lbl) Add MS 32513: ff. 1–180v (middle period?).

with Ashton and viscount Preston.³ The two latter (both Jacobites) were bound for the court of James II in France and were to sail the next day, so they offered to secure the release of Montague North, who was a prisoner at Toulon.⁴ But en route to France they were arrested while carrying treasonable papers and brought back to England, where they were tried and sentenced for treason. Unlike Ashton, however, Preston was pardoned, not hanged, after making a confession that implicated others.⁵ Although Roger and Dudley had no knowledge of a conspiracy to restore James II, they expected to be sent for and examined by the authorities because ‘appearances were against them’.⁶

³ I.e., Richard Graham, who was created a Scottish peer (1680) and a British peer at St. Germain (1689).

⁴ See *supra* Abbreviations: MN (1).

⁵ At the trial of the two Jacobite conspirators, the presiding judge was Jeffreys, about whom RN, *Life/FN*, p. 452, concludes: ‘And so wolves are comonly found under sheep-skins; and persons uneasy under regular powers, will ever be irregular, and cruel to boot, when invested with power themselves.’

⁶ See Korsten, *Roger North*, p. 18, and Grassby, *The English Gentleman in Trade*, p. 143.

APPENDIX A: BRITISH LIBRARY ADDITIONAL MS 32529: ff. 1–238v

British Library Add MS 32529: ff. 1–238v is a quarto volume bound after purchase in 1885 by the British Library (then the British Museum). Like its companion volume, Add MS 32530,¹ it has the running title, ‘Of Etimology’, which is centred and occurs on most but not all the folios. North’s own pagination also occurs on most folios either as roman numerals or as letters of the alphabet, although on some folios he has used other identifying marks, for example, a dot centred above a hyphen. These physical features, which have guided the grouping of folios into either collections or discards, are omitted in the list of contents below.

Like many of his surviving manuscripts, the contents of this volume provide evidence of North’s method of assay by noting down memoranda, discarding some portions and revising others, so as to move towards a more impartial position or towards a more general statement of the problem at hand. In the course of his tests, North ranges over a number of different topics, including the language of the law. For example, he remarks on ‘the necessity of some peculiar law language’, that is, technical terms. And he also considers the mixture of languages as required by a fourteenth-century statute²—that records be in Latin and pleading in English, ‘saving’ only terms of law, that is, law French that came into England with the Norman conquest. But, as he points out, just as the Latin language ‘by Anglicising went off from the classick’,

...so our law French is gon from the Norman or Gascoigne, and by the same means, for ceasing to be a living speech, and no care at all being had to preserve any decorum of it, ... it began to barbarise, and fill with Anglicismes ... so that now it is a strang[e] gallimaufry [i.e., miscellany], not like any speech

¹ See *supra* Part II. Introduction to the Edition: Description of the Manuscript.

² 13 Ed. III, cap. 15.

that is extant in the world, and reteins onely the name, with a little of the garb of French, and so it rests, appropriate to service of the law.... (ff. 106v–107).

A number of folios are devoted to ‘authorities’ of the law, namely, written sources such as institutions, yearbooks, law reports and judicial records, some of which are ‘vernacular’—still in use—and others ‘classic’—of historical interest only. But this is only a taste of what interested readers may find in the pages of the volume.

From the nature of the contents, which includes fragments, drafts and essays in different stages of completion, it seems that North wrote various portions at different periods of time. Three clues provide some support for this supposition. First, according to Mary Chan, all the paper in the volume has the water mark, shaded shield/DP, which she dates from one letter written 31 March 1703/4.³ Second, as previously mentioned,⁴ North indicates (f. 131v) that George Hicke was ‘now publishing a Collection of the Septentrionall Antiquitys’, that is, his *Thesaurus*, the first part of which was published in 1703, the second part in 1705. Third, North states (f. 228) that a history of ‘our own times, I mean, [of] Charles 2d[,] is come to my hands which perhaps in time may see the light’. This statement suggests that he was still working on his own posthumously published *Examen*, which he completed in 1713.⁵

Some of the contents in Add MS 32529 have a connection with the companion volume, 32530. To indicate these connections, I have used two symbols, one for close, ©, and the other for related, ®. Whenever possible, I have also used the same symbols to indicate a connection between some of the contents of 32529 and North’s posthumously published *A Discourse on the Study of the Laws* (DSL).⁶ However, these are guides only, since a systematic study of the manuscript has yet to be undertaken.

³ See *NP* 4, pp. 62, 79.

⁴ See *supra* Part II. Introduction to the Edition: Description of the Manuscript.

⁵ See *infra* Appendix B: [NORTH] 1711 and Appendix C: NORTH 1740.

⁶ See *infra* Appendix C: NORTH 1824.

*List of Contents**ff. 1–82v = Collection**ff. 1–46v*

- (f. 1) Of the word [etymology], and the meaning of it, both ordinarily, and then extended
© 32530: ff. 1–4v
- (f. 5) Justification of the comon etimology
© 32530: ff. 5–11v (*note that 32530: ff. 114v–115 = wastesheet from this section of 32529*)
- (f. 13) Etimology, as a crittical learning, useful in the world
© 32530: ff. 12–21v
- (f. 23) Of language and its incidents
© 32530: ff. 22–29v
- (f. 32v) Capacity of language and translations
© 32530: ff. 30–35v
- (f. 37) Of termes of art, style and idioms
© 32530: ff. 36–39v
- (f. 39v) Some fruitless experiments of language
© 32530: ff. 40–49v

ff. 47–82v

- (f. 47) Some notes relating to antiquitys of laws and governement = 8 numbered but untitled subsections as follows:
 - ff. 47–57v = subsections 1–5*
 - © 32530: ff. 50–67*
 - ff. 58–64v = subsection 6*
 - © 32530: ff. 84–88v*
 - ff. 65–74v = subsection 7*
 - © 32530: ff. 78–83*
 - ff. 74v–82v = subsection 8⁷*

⁷ Portions of ff. 74v–82v seem to be a draft for the digression in RN, *Examen*, pp. 329–41, discussed *supra* Chapter 1 sect. 1.2.

ff. 83–132v = Collection

- (f. 83) Skill of laws, rests much upon words
- (f. 88v) The use of etymology attending the study of the law
® DSL
- (f. 91) Some notes of a method in the study of the law
© DSL
- (f. 98v) The necessity of some peculiar law language
® 32530: ff. 1–49v
- (f. 100) Of law-language reformed
- (f. 103) The diversity of law-language
- (f. 106v) Of the law French
® DSL
- (f. 109v) Of fines upon originalls [i.e., original (prerogative) writs]
- (f. 113v) Of palace law = *a digression that includes 3 titled subsections:*
 - Means of reformation (f. 116)
 - The case of attorneys (f. 119v)
 - The case of registers (f. 122)
- (f. 123v) The use and abuse of formes
- (f. 127) Attempts of the lawyers in etymology

*ff. 133–134 = Discards**ff. 134v–140 (140v is blank) = Collection*

- (f. 134v) The recovery of books and evidences of the law
® DSL
- (f. 138) Of the authentick evidences of the law = *draft*
- (f. 140) The study of records = *blank except for title*

*ff. 141–145v = Discards**ff. 146–151v = Collection*

® 32530: ff. 1–4v, 30v–35v, 36–40

ff. 152–153v = Discards

ff. 154–189v = Collection

- (f. 154) Comon law = *marginal heading that occurs on most, but not all of the folios in this miscellaneous collection*
 ® DSL some parts only

ff. 190–203v = Collection

- (f. 190) High treason = *draft*
- (f. 194) High treason

ff. 204–211v = Collection

- (f. 204) The words s[c]accarium, exchequer and check⁸

ff. 212–234v = Collection

- (f. 215) *begins*: ‘I designed in the next place to shew the use of etimologicall knowledg, for understanding more nicely the ordinary historys of past ages’
 ® 32530: ff. 1–29v and ff. 112v–152

ff. 235–238v = Collection

- (f. 235) Laws are historycall
 © 32530: ff. 89–96v

⁸ It is possible that this memorandum, which refers to the game of chess, served as an initial exploration of the term ‘check’ which RN defines in the unpaginated ‘Vocabulary’ that concludes *The Gentleman Accomptant*; see *infra* Appendix B: [NORTH] 1714. According to his definition, ‘CHECK, is now, what *Controul* was anciently. It is, when two Persons keep Accompts of the same Business, those are *Checks* one upon the other, discovering upon Comparison, Errors of Sur-charge or Omission. In great Manageries there are Officers express, called *Checks*, and others upon them to compare and cast up, which are *Check* upon *Check*, and as some Authors have it, *Cheat* upon *Cheat*; for where Honesty is not found, Check to Fraud, is like Oil to the Fire. The Game of Chess, or if you please, Check, shews the Meaning of the Word, which in a very ancient Sense, is to Coerce or Restraine. And if the right use happen to be made of a Check, whereby a Knave is discovered and turned out, that, as to him, is Check-Mate.’



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APPENDIX B: WRITINGS BY ROGER NORTH PUBLISHED BEFORE 1734

[NORTH] 1680

‘The Narrative of Sir Francis North Lord Chief Justice of the Common-pleas, at the Council Board’, *The Examination of Captain William Bedlow deceased, relating to The Popish Plot, taken in his last Sickness, by Sir Francis North, Chief Justice of the Court of Common Pleas. Together with the Narrative of Sir Francis North, at the Council Board: And the Letter of Sir Francis North, to Mr. Secretary Jenkins, Relating to this Examination.* Perused and Signed to be Printed [10 November 1680], according to the Order of the House of Commons, by me William Williams, Speaker. London, Printed by the Assigns of John Bill, Thomas Newcomb, and Henry Hills, Printers to the Kings most Excellent Majesty, 1680.

There are three parts to this sixteen-page pamphlet as follows: (1) ‘The Examination of Capt. William Bedlow, taken upon oath before the Lord Chief Justice North, at Bristol, on Monday the 16th of August, 1680’, pp. 5–7; (2) ‘The Narrative....’, pp. 8–14; (3) a letter ‘To the Right Honourable Sir Lyonell Jenkins,¹ one of His Majesties principal Secretaries of State’, pp. 15–16. Although each of the parts is signed by Francis North, Roger North reveals his authorship of the second part in the following statement:

Once concluding at Bristoll, wee were told Bedlo was in towne, sick to death, and was burthened in his conscience with somewhat which concerned the nation, and had a mind to eas himself by revealing it to the judg [Francis North]. He [the judge] concluded by all the marks it was a cheat and a trappan [i.e., snare] and walked cautiously. He took me, the minister that preacht, the sheriffs, and his clerk with him[,] and

¹ I.e., the civilian and diplomatist, Leoline Jenkins, who was secretary of state, 1680–84.

proceeded as is mentioned elsewhere.² Afterwards when the matter came before the Hous of Comons that he [Francis North] might not appear to conceal any thing, he made me give him an account in wrighting of what I observed and so [I] made a relation in wrighting, which was presented to the Hous, and afterwards cryd about towne, by the name of my Lord Cheif Justice North's Narrative.³

North also included the contents of the pamphlet in the life of his brother Francis.⁴ To these, he added his own interpretation of the 'design' behind the 'trappan' of the adventurer William Bedloe, at the same time acknowledging that 'it is not possible to develope the matter, but by pure conjecture; and that I shall not scruple, out of my lengths, to afford, whither any one living concurre with me or not'. Briefly stated, his conjecture is that 'the designe had two views, one respecting the publik, to eke out the plott, and the other of a more private account, to trappan his Lordship [Francis North], and make him obnoxious to the parliament, for tampering, subornation, suppression or otherwise as the game might play'.⁵

[NORTH] 1690

A Letter Concerning the Disabling Clauses Lately offered to The House of Commons, for regulating Corporations. London, To be sold by Randal Taylor, near Stationers-Hall. 1690.

Couched in the form of a letter to 'Sir', this twenty-two page pamphlet relates to actions by the Whigs, who, in order to seek

² See RN, *Life/FN*, p. 66 *et passim*.

³ RN, *Notes of Me*, p. 212.

⁴ RN, *Life/FN*, pp. 398–401, where the order is different, beginning with 'The Narrative', followed by the letter and 'The Examination'. Note that Chan has conflated RN's remarks (p. 400) with the text of 'The Narrative'.

⁵ RN, *Life/FN*, pp. 401–3, p. 401; see also RN, *Examen*, pp. 252–5.

redress by an act of parliament, introduced ‘the Corporation Bill with a view to restoring the corporations forfeited in the two previous reigns’; and ‘by means of some clauses in this Bill, the Whigs also aimed at depriving all the Tories who had played a part in the surrender of charters, of the right to vote at elections for a period of seven years’.⁶ The writer’s chief purpose is to examine the legal implications of the aforementioned clauses. But this was not the only task he was to perform, for at the outset he expresses the wish that ‘Sir’

...had omitted those Commands, whereby I am obliged to give you an Account of the Conduct, and my Sense touching the Design and Consequence of them. For I cannot, without great reluctance undertake to resolve the Mystery of a Project, formed by Gentlemen of the chief Rank in Parliament Business. But I must not dispute your Injunctions, which, without the Parliament’s Help, are Laws to me, therefore I submit (p. 3).

Attribution to North is based on a passage in his posthumously published *Examen*, where he writes that one of the newly deprived bishops procured ‘the Writer of these Papers to publish a small Pamphlet, while the Matter was depending, to expose the Wretchedness of these Clauses, which many thought went a great Way in creating a right Understanding of them’.⁷ The question thus arises as to the identity of the bishop, the ‘Sir’ to whom the pamphlet-letter is addressed. In 1689 the following five bishops were suspended: William Sancroft, archbishop of Canterbury; Thomas Ken, bishop of Bath and Wells; John Lake, bishop of Chichester; Francis Turner, bishop of Ely; and Thomas White, bishop of Peterborough.⁸ On 1 February 1690 all but Lake, who had died, were

⁶ Korsten, *Roger North*, pp. 15 and 261 n.134, who first identified RN as the probable author.

⁷ RN, *Examen*, p. 628.

⁸ In 1688 these five, with two others, had been sent to the Tower for their petition against James II’s illegal Declaration of Indulgence; see *supra* Chapter 1 sect. 1.2.

deprived of their ecclesiastical livings, so that the pamphlet-letter must have been addressed to one of the four remaining.

Although no positive proof has so far come to light, there are two reasons why Sancroft is the likely person who commanded North to undertake the exposition. First, on 3 October 1688 Sancroft, as head of a deputation to James II, advised the king to revoke all his illegal acts, to abolish the high commission and to restore the city charters. As North states in *Examen*, the word ‘charters’ meant ‘the *Quo Warrantos* brought against some Corporations for seising their Franchises into the King’s Hands for abuser [i.e., illegal use] of them’.⁹ And in detailing this episode, he also summarises the matter of the disabling clauses, making clear that he regarded the Bill introducing them as retrospective legislation and, hence, nothing less than an abuse of power.¹⁰

Second, as part of his professional duties as steward to the see of Canterbury even after Sancroft’s deprivation,¹¹ North was required to advise on legal issues. And his advice sometimes took the form of written papers, one of which was devoted specifically to the matter of persons deprived.¹² Moreover, in *Notes of Me*, where he recounts the period of his stewardship to Sancroft, North represents himself (using a sceptical ploy) as somewhat juvenile and wanting in experience and describes some of his papers as ‘crude, and ill penned’. Something of this character appears in the conclusion to the pamphlet-letter, where he writes:

⁹ RN, *Examen*, p. 624.

¹⁰ RN, *Examen*, pp. 627–8. See also RN, ‘Of Etimology’ (unedited sect. 9) ff. 68–68v: ‘It is a justice of this sort [i.e., an injustice], when offences are branded by retrospection, that is, actions, not even when done, are made evil by authority afterwards, in order that this or that man or party may forfeit, or suffer, etc. whom the knowne laws would have acquitted. Such ways as these are too often practis’t but I name no times, nor persons, to avoid invidious reflections, and because a word to the [wise] is sufficient’.

¹¹ For RN’s responsibilities as steward, see *supra* Chapter 1 sect. 1.3.

¹² See RN, *Notes of Me*, pp. 184–5, where he also mentions papers on the high commission (one of the matters Sancroft raised in his 1688 advice to James II), the dispensing power, the law of the Exchequer and ‘Respective Allegiance’, i.e., the law with respect to duty under usurping superiors or ‘lords pro tempore’.

Now Sir to conclude your trouble: I think I have exposed the wretchedness of these Clauses; it is possible, I may not have touch'd all particulars, so exquisitely as the matters would bear; but you will observe many Defects, it may be, Mistakes, but it is your part now to excuse them; seeing it was your Commands, and not my own Inclination, that led me to these Observations; and therefore I tender them to your acceptance, only as a Testimony that I am most sincerely, &c. (p. 22)

In the *Examen* North states that his pamphlet-letter made the promoters of the clauses 'very angry', with the consequence that they caused a new one to be written as an 'Invective by Way of Answer, letting fly, at all Adventures, against a noble Peer (lately created of *Guernsey*) supposed to be the Author of it, with as much Justice as all the rest'.¹³ The pamphlet to which he alludes is *The true Friends to Corporations vindicated; in answer to A Letter concerning the disabling Clauses lately offered to the House of Commons for regulating Corporations* (London, 1690), published anonymously. I have been unable to identify the author, who undoubtedly was a Whig. As for the pretended author—the 'noble Peer (lately created of *Guernsey*)'—this was Heneage Finch,¹⁴ who was created baron Guernsey in 1703. Called to the bar from the Inner Temple, he was king's counsel (1677) and solicitor-general (1679) until dismissed by James II (1686). He pleaded the crown's case in the London *quo warranto* (1683) and was leading counsel for the seven bishops (1688).

Quo warranto (by what authority) was a prerogative writ, the last major political use of which occurred when Charles II sought to remodel municipal corporations by forcing new charters upon them. The city of London fought against this reform until the King's Bench in 1683 delivered the judgment against the city that its liberty of being a corporation be seized into the king's hands.¹⁵ North provides

¹³ RN, *Examen*, p. 628.

¹⁴ He was second son of Heneage Finch, 1st earl of Nottingham, and lord chancellor (1675–82), whom FN succeeded as lord keeper of the Great Seal.

¹⁵ For *quo warranto* and other prerogative writs, see Baker, *An Introduction*, pp. 143–53.

many details about these matters not only in the *Examen* but also in the life of his brother Francis.¹⁶ And both works also include a few brief remarks about the period after his brother's death,¹⁷ when 'the sluices were opened'.¹⁸ In an attempt to interpret the issues involved to 'the present age', North states the case as follows:

...Let [i.e., imagine] the livery of London be corrupted by Jacobitisme (which is a forced but no impossible supposition) and at the Comon Hall, choos into offices such as the lord mayor, and sherrifs, etc., persons being the most impudent Jacobites in the whole citty; and let the sherrifs so chosen make all panells of jurys, and retorne such as shall find, ignoramus,¹⁹ upon all bills of indictments for treason and sedition in London and Middlesex. And also that the venom was so spread, that even in parliament redress might not be had; and street noises and tumults fright all the comon people, and make guards necessary for immediate defence, and punishment upon any laws not to be come at; what would this or any governement doe in such a case? Act arbitrarily by an armye, without order of law? No, they would doe just as was here done with the citty, if (without being instructed by the present example) they knew how.²⁰

¹⁶ RN, *Examen*, pp. 624–55, and RN, *Life/FN*, *passim*.

¹⁷ RN, *Examen*, pp. 627–8, and RN, *Life/FN*, pp. 421–3, 447–8 (which includes the 'exorbitances' of Jeffreys).

¹⁸ RN, *Life/FN*, p. 422.

¹⁹ I.e., if the grand jurors endorse a bill of indictment with the word *ignoramus* (we do not know), proceedings on the bill ended. Such an endorsement was not a verdict, and a rejected bill could be laid before another grand jury later; see Baker, *An Introduction*, pp. 505–6.

²⁰ RN, *Life/FN*, p. 421.

[NORTH] 1691, i.e., 1692

 ‘The Preface’, [Dudley North,] *Discourses upon Trade; Principally Directed to the Cases of the Interest, Coynage, Clipping, Increase of Money*. London: Printed for Tho. Basset, at the George in Fleet-street. 1691.

William Letwin consulted the original manuscript now located at (UK:Lbl) Add MS 32522: ff. 1–16.²¹ It is identical with the printed text and is in Roger North’s handwriting throughout, only a dozen words in the second discourse (see below) being in the hand of his brother Dudley.²² Although the pamphlet had been announced for publication in November 1691,²³ Dudley’s death on 30 December of that year makes it highly probable that the actual publication was later. Moreover, in England, which still used the Julian calendar, the new year was numbered from 25 March, so that the date of publication (using new style dates) would have been sometime between 1 January and 25 March 1692.

The pamphlet opens with ‘The Preface’, pp. [iii–x], followed by (1) ‘A Discourse Concerning the Abatement of Interest’, pp. 1–9; (2) ‘*A Discourse of Coyned Money*’, pp. 10–23; and (3) a ‘Postscript’, pp. [24–8]. According to Letwin,

The first discourse argues that interest rates should not be limited by law, since they will always, in fact, be regulated by the market. The second discourse offers a remedy for “clipping” [the cutting of silver from the unmilled edges of old coins] which would make bad coin a personal liability to whoever held it at some designated future date. The postscript,

²¹ Letwin, ‘The Authorship’, and Letwin, *The Origins of Scientific Economics*, pp. 182–204, 251–72. However, he did not consult the fragments preserved in RN’s hand; see (UK:Lbl) Add MS 32526: ff. 127–127v (early period).

²² Letwin, *The Origins of Scientific Economics*, pp. 264–5. See also *supra* Chapter 1 sects. 1.1 and 1.4.

²³ Letwin, *The Origins of Scientific Economics*, p. 265 n.3 (the announcement appeared in the Term Catalogue for that date).

in answer to contemporary complaints of the shortage of money, maintains that there can never, for any length of time, be either too little or too much money in existence. These are the practical conclusions which [Dudley] North reaches, but he justifies them by a relatively profound argument about the nature of trade and money.²⁴

In his discussion of this pamphlet, Letwin drew attention to two features. First, the anonymous author of 'The Preface' maintains throughout the distinction between himself and the supposedly unknown author of the body of the *Discourses*. Second, 'The Preface' and the text disagree on important points—in particular, the ideas in some of the fourteen economic maxims in 'The Preface' that do not correspond to the text. Using stylistic and other kinds of evidence, Letwin identified Roger North as the author of 'The Preface', the importance of which—at least for economists—lies in its advocacy of free trade.²⁵

Richard Grassby seems to have studied the extant manuscripts relating to Dudley North about the same time that Letwin's articles appeared, but the results of his study were not published until much later.²⁶ In a footnote he suggested the possibility that in addition to 'The Preface', Roger North had inserted the last paragraph to the second discourse, as well as to the 'Postscript'.²⁷ Although Grassby offered no support for this suggestion, it has some merit, even though evidence for the suggestion is weaker for the last paragraph of the second discourse than for that of the 'Postscript'. Taking the latter

²⁴ Letwin, 'The Authorship', p. 43. For a brief statement of DN (3)'s theory, see RN, 'Cursory Notes of Building', *Of Building*, p. 5.

²⁵ RN's advocacy may have been inspired by Coke, for according to Sheppard in Coke, *Selected Writings*, p. xxv, although the latter did not pursue 'the wholesale laissez-faire economic regime developed a century later, he was nearer to it than most in his age, and his reforms of the law made its realization all the more possible'.

²⁶ See Grassby, *The English Gentleman in Trade*, pp. 230–57, 286–9, who also reprints 'The Preface' (pp. 352–7), as well as the body of the *Discourses* (pp. 290–303).

²⁷ Grassby, *The English Gentleman in Trade*, p. 231.

case first, the last paragraph of the 'Postscript' is separated by a space from the previous text, where there is no spacing between other paragraphs. And the paragraph itself seems to present the sum of Roger North's economic maxims in 'The Preface'. Moreover, it includes a proverbial phrase more in keeping with his style than Dudley's. The paragraph is as follows:

Thus we may labour to hedge in the Cuckow,²⁸ but in vain;
for no People ever yet grew rich by Policies; but it is Peace,
Industry, and Freedom that brings Trade and Wealth, and
nothing else (p. [28]).

As for the last paragraph of the second discourse, this too includes a proverbial saying—'Robbing of *Peter* to pay *Paul*' (p. 9)²⁹—and Roger North uses this saying in some of his writings on music.³⁰ Since elsewhere he indicates that the style of the *Discourses* 'was a little touched by me', it also is possible that the two sayings were merely additions to liven up Dudley's style.³¹

To date, there has been little study relating to North's pattern of thought about economics as found in other works besides 'The Preface'.³² And there still has been no systematic study of his manuscripts that not only transmit some of Dudley's ideas but also include several versions of that's brother life, of which there still is no modern edition. And still to be considered is the exchange of

²⁸ *to hedge in the Cuckow*, i.e., cuckoo. This saying derives from an old English tale, first recounted in print in the chapbook *The Merry Tales of the Mad Men of Gotham* (1540), in which men of York, desiring to have eternal spring, attempted in vain to wall in a cuckoo—the symbol of spring.

²⁹ See Heywood, *The Proverbs*, pp. 26, 13.

³⁰ See, e.g., *NP* 3, p. 142 (relating to tuning).

³¹ RN makes this statement at least twice; see Letwin, *The Origins of Scientific Economics*, p. 265, who quoted from two versions of the life of DN (3), i.e., f. 123 in (UK:Lbl) Add MSS 32512: ff. 1–211v (1709) and f. 112 in 32513: ff. 1–180v (middle period?).

³² See, e.g., RN, 'Cursory Notes of Building', *Of Building*, p. 5; see also *infra* [NORTH] 1714 and Appendix C: NORTH 1753.

ideas between Francis, Dudley and Roger North,³³ that may have influenced their similar methods of reasoning, their conceptions of self-correcting mechanisms and their use of equilibrium analyses not merely in Dudley's supply and demand theory but also, for example, in the philosophies of music of the two other brothers.³⁴ Until these kinds of studies are undertaken, ahistorical studies,³⁵ however interesting, will be equally problematic in concept as in fact.

[NORTH] 1698

Arguments and Materials for a Register of Estates. London, printed for Samuel Lowndes over against Exeter-Exchange in the Strand, 1698.

During the seventeenth century there were a number of arguments for a public register for the transfer of land,³⁶ including 'a small tract' by Matthew Hale, 'concluding against registers, at least very doubtfully concerning them'.³⁷ Hale had circulated the tract in manuscript; and one of its readers, Francis North, wrote an answer,

³³ See, e.g., RN, *Life/FN*, pp. 82–3, 465–75, 484, 493, 506–7.

³⁴ Grassby, *The English Gentleman in Trade*, pp. 352–7, assumed that DN (3) developed his concept of equilibrium from double entry accounting; but Kassler, *The Beginnings of the Modern Philosophy of Music*, p. 88 n.161, suggested that such accounting prepared DN (3) to accept and then to apply FN's 1677 equilibrium model to explain an economic process (money supply). For RN's development of an equilibrium model, see RN, *Cursory Notes of Musicke*, and Kassler, *Inner Music*, pp. 160–207.

³⁵ See, e.g., Chosky, 'Previous Undocumented Macroeconomics', and Chosky, 'The Bifurcated Economics of Sir Dudley North and Roger North'.

³⁶ Arguments for a register appeared as early as 1656; see Baker, *An Introduction*, p. 214. In the 1670s promoters included Robert Murray [Moray] and William Petty, whereas dissenters included William Pierrepont.

³⁷ RN, *Life/FN*, pp. 56–7. See also Holdsworth, *A History of English Law*, vol. 6, pp. 594–5; Heward, *Matthew Hale*, pp. 164–6; and Cromartie, *Sir Matthew Hale*, pp. 71–2, 243.

because he believed that if there were no registry, ‘forgery would soon become the best trade in England’.³⁸ It is significant, therefore, that between 1673 and 1675 Francis North was involved in drafting what was to become the 1677 Statute of Frauds (29 Car. II), which made written or other adequate evidence necessary for certain transactions, including the conveyance of land.³⁹ About 1675, perhaps as a result of his work on this Statute, he introduced a bill in parliament for a register of estates; but the bill did not succeed. Then, in 1685, when Roger North was a member of parliament, another bill was introduced and ‘much opposed’. And although he was ‘for the thing, tho not for that bill’, he delivered his objections against it in a long and ‘warm’ speech.

As a consequence, the House of Commons ordered that North chair a committee to ‘meet during the recess, and to prepare a bill upon the debate’.

[And] as to the proceeding upon this order, I was sincere, and drew the bill, prepared abstracts, for my comittee. I caused accounts to be sent me, from Holland, Scotland, and France. I had an account of the register in our fenns, that I might be instructed in all the models of that kind considerable in Europe. Towards the meeting of the Parliament the 2d time, I had my tackling all ready, and mett my comittee, who were all able Parliament men, and very affectionate, as I thought to the caus. But, O wonder, not one would medle with the matter, they would not hear the bill read, nor look upon an abstract, but were all full of fears and jealousys of I knew not what. ... This poysoned the best designe that ever was advanct for the establishment of English titles and so fare it well. I did my

³⁸ RN, *Life/FN*, pp. 273–4; for FN’s notes on the subject, see *ibid.*, pp. 295–7, 481, 491; see also RN’s transcription of FN’s notes ‘about a Registry’ (UK: Lbl) Add MS 32518: ff. 51–56 (early period).

³⁹ See Holdsworth, *A History of English Law*, vol. 6, pp. 380–93, 673–7, who, p. 384, stated that the men ‘mainly responsible’ for the 1677 Statute were Heneage Finch, 1st earl of Nottingham, and FN, although they were assisted by Leoline Jenkins and by other judges and members of the committees.

best, and hope I shall never want the ayd of such law, and let posterity reflect, what advantage might have bin to them from it, if their predecessors would have suffered it to pass.⁴⁰

The issue of a register was raised again in the thirty-page pamphlet, which was published anonymously in 1698 and attributed to North by G. A. Starr on the basis of its substance, use of language and statements in North's autobiography.⁴¹ Cast in the form of a third person narrative, the arguments in favour of a register are reported to be those of a 'Gentleman of the Long Robe',⁴² who 'happene'd lately to be in the Company with several Members of Parliament, and others', when the topic was discussed. Although the Gentleman of the Long Robe believes that a register of estates is 'not only useful, but almost necessary to be set up in England', he canvasses the 'Motives' of those who were not in favour, including

...my Lord Chief Justice *Hales*, that great Light of the Law, whose subtlety and foresight suggested so many Casualites [*sic*] upon a Register, that he was afraid of the manner, rather than against the thing, as appears by his little Tract on that Subject, which hath been made public; wherein he concludes with some Cautions to be had in the Modelling; which shews he was not altogether against it. And he said, He had also seen a Tract on the same subject by another Eminent Chief of his Time [Francis North], who is earnestly and clearly for a Register.... [p. 10].

Hale's 'little Tract' had been published posthumously without his name and with the misleading title, *A Treatise showing how Useful*

⁴⁰ RN, *Notes of Me*, p. 235. An autograph extract of RN's bill is preserved in (UK: Nr), along with at least two other manuscripts relating to a register.

⁴¹ After describing the 'modell' proposed in his bill, RN, *Notes of Me*, p. 235, writes: 'I shall not here deliver my modell, and reasons, becaus it is done in part by a late pamphlett I publisht on the subject'. He also expresses his intention 'more largely to treat the subject', i.e., in RN, *Life/FN*.

⁴² According to Prest, 'The English Bar', p. 81, in 1685 the expensive velvet robes of the legal profession were abandoned for lightweight black-faced gown cloth used for mourning the death of Charles II and 'worn ever since'.

the enrolling and registering of all Conveyances of Land may be (London, 1694). It is probable, therefore, that it was this publication that prompted North to revisit the issue of a register.

[NORTH (tr.)] 1701

 ‘The Translator Adds’, *Reflections on our Common Failings*. Done out of French, By a Person of Honour. London: Printed by G. Croom, for R. Smith at the Angel and Bible, without Temple-Bar; and John Chantry, over-against Exeter-Change in the Strand. 1701.

As previously mentioned (Chapter 1, sect. 1.4), prior to 1701 North had drafted several essays concerning human manners, using the form of the moral lesson. But because he was dissatisfied with these experiments in style, he settled for a translation of *Réflexions sur les défauts d'autrui* (Paris, 1690, re-issued several times), published anonymously in a single volume of two parts and, considerably later, attributed to Pierre de Villiers. Evidence for North's involvement is found in the portions of his translation that are still preserved⁴³, as well as in his references to the book in (UK:Lbl) Add MS 32529: f. 32 and its sequel, ‘Of Etimology’.

In its English dress ‘The Author's Preface’ (A3–A5) is followed by ‘The Translator Adds.’ (which has the running title ‘Preface’ but no signature marks or pagination), the ‘Index’ and twenty-two essays. As enumerated in the ‘Index’, these essays are: 1. Vanity; 2. Affectation;⁴⁴ 3. Rallery; 4. Envy; 5. Self-Interest; 6. Friends; 7. Breeding;⁴⁵ 8. Reports; 9. Slander; 10. Persons Living together; 11. Pretending to Things; 12. Such as act by Imitation; 13. Wit; 14. Exercise of Wit; 15. Spightful and Satyrick Wit;

⁴³ See ff. 114–121v, ‘Reflections on our comon failings’ (early period), part of a miscellaneous collection of RN's writings (UK:Lbl) Add MS 32523: ff. 1–272v.

⁴⁴ Cf. RN, ‘Affectation’ (UK:Lbl) Add MS 32526: ff. 55–56v (early period?).

⁴⁵ Cf. RN, ‘Breeding’ (UK:Lbl) Add MSS 32523: ff. 132–141v, 32526: ff. 50v–54v (early period?).

16. Manners of Women;⁴⁶ 17. Religion; 18. Pretenders to Sanctity; 19. Men of Virtue; 20. Honest Men; 21. Conscience and good Works; 22. Sincere Speaking.

In his preface, 'The Translator Adds', North concludes from internal evidence not only that the anonymous French author was '*one of the Secular Clergy*' and '*a Person well-bred*', but also that he had a capacity for satire in the service of morality. For '*Comedies, when Facetious and Virtuous, provide the best correctors of Vice, and that by dressing it in its own native Garb, a Fools Coat*'. However, since the author's satire relates to his own country and its customs, something will be lost in translation; and as a consequence, North offers '*a word or two of Translations in general*'. For however faulty and imperfect they might be, their excellence ('*virtue*') consists in

*...more, and less; [for] none of them render exactly the Sence of their Original.... And if any were ever allowed to equal, or exceed the Original, it was not for rendring, but altering the Sence; and so much is not Translation, but Original. ... That which is chiefly aimed at in doing it, is to transfer into our Language, the Authors Conceptions, so as the English Reader, may (as near as is possible) have the same Ideas, the Author intended to express. And to this design, all order, and choice of Words, and [figurative] Expressions are made to give way, how well performed....*⁴⁷

Regarding his own translation, North remarks briefly that in attempting to purge the '*Gallisicisms*', he took '*no small liberty*' in varying his author's style, which in addition to being stiff, sententious and affected, exhibited the French fondness for '*well turned, and measured Periods*'.⁴⁸ Nevertheless, he reminds the

⁴⁶ Cf. RN, 'Of the generall conduct of weomen' (UK:Lbl) Add MS 32526: ff. 68v–74 (early period).

⁴⁷ Cf. *supra* RN, 'Of Etimology', ff. 32–35.

⁴⁸ I.e., the internal 'tune' and 'time' of periods in sentences.

reader that ‘one cannot deal in a Language so near as the immediate Translating it, without carrying over some tincture’ of the original.⁴⁹

[NORTH] 1711

Reflections upon some Passages in Mr. Leclerc's Life of Mr. John Locke: In a Letter to a Friend. With a Preface, Containing some Remarks on Two large Volumes of libels; the one intituled State-Tracts, and the other falsely call'd The Compleat History of England, Vol. III. commonly ascrib'd to Dr. Kennet. London: Printed for J. Morphew, near Stationers-Hall. 1711.

North's authorship of this thirty-four page pamphlet was identified by his son Montagu.⁵⁰ Although some recent critics have described it as an attack on Locke,⁵¹ it is no such thing. Rather, its author had two aims. In the main body of the pamphlet (pp. 15–34), he attempts to answer the factual errors concerning Anthony Ashley Cooper, first earl of Shaftesbury, in Jean Le Clerc's *The Life and Character of Mr J. Locke* (London, 1706), translated by ‘T. F. P. Gent.’. North's procedure is to examine particular statements made by Le Clerc,⁵² in the course of which he draws particular attention to that author's lack of acquaintance with English law, especially ‘the course of

⁴⁹ Cf. *supra* RN, ‘Of Etimology’, f. 34, where he observes that a translator cannot ‘step to and fro, as must be done in such work from one [language] to another, without carrying over a tincture of the first’.

⁵⁰ See the note to RN, *Examen*, p. 36. Note also that MN (2) included a portion of ‘The Preface’, as well as the complete body of the pamphlet in RN, *Examen*, pp. 557n and 674–92.

⁵¹ E.g., Stewart, ‘Samuel Clarke, Newtonianism, and the Factions’, p. 64, according to whom the *Reflections* is ‘a “scornful” pamphlet on John Locke’, perhaps echoing Millard, ‘The Chronology of Roger North's Main Works’, p. 289.

⁵² These relate chiefly to (1) Shaftesbury's role as chancellor of the Exchequer (1661–72), and (2) aspects of his political life (1672–83).

proceeding in capital Cases', about which North provides details (pp. 28–30).

The second main aim is revealed in 'The Preface' (pp. 1–14), where North describes Le Clerc's 'Romance' as determined by 'a Whiggish Code' entitled *State Tracts: being a Collection of Several Treatises relating to the Government. Privately Printed in the Reign of K. Charles II* [1689] (London, 1693). Despite its high-sounding title, the contents consist of 'Pamphlets that were sent abroad in Print for the Purposes of a Party, who were continually busy in the great Work of overturning Church and State' (p. 4). Instead of trying to answer those pamphlets, North devotes most of 'The Preface' to encouraging 'an able judicious Pen'⁵³ to 'an *Examen Historicum*' of the falsehoods and slanders contained in the third volume of *A Complete History of England* (London, 1706), claimed to be 'by an impartial Hand' but written by White Kennett.

As the title of the pamphlet indicates, it is couched in the form of a letter to an unnamed person, almost certainly George Hickes, to whom North seems to have sent a copy prior to publication. For on 9 May 1710 Hickes wrote to North:

I was mightily pleased at the indignation you expressed at Mr ... Kennet's historys of K. Ch. II. and K. James II ... and heartily wish that at your leisure you would make observations upon them. We want an Heylin⁵⁴ to write an examen historicum upon them. But if you have the tryals, and other loyal papers of those times, you may go a great way towards confuteing all his misrepresentations, and lyes.⁵⁵

⁵³ RN (pp. 11, 14) seems to have in mind George Hornby, the anonymous author of *A Caveat against the Whiggs: in a short historical View of their Transactions. Wherein are discover'd their many Attempts and Contrivances against the establish'd Government ... since the Restoration of Charles II* (London, 1710), which was re-issued in a number of editions.

⁵⁴ I.e., Peter Heylyn, whose *Examen historicum* was published in the 1650s as a defence of Anglican ecclesiology against its puritan opponents.

⁵⁵ (UK:Nr) quoted by Chan in RN, *Life/FN*, p. xviii.

During the period when Hickes was working on his *Thesaurus*,⁵⁶ Kennett was one of the collaborators on the project, the two men cooperating on friendly terms. According to Richard Harris, it was Kennett who conceived etymological research as ‘one means to a fuller understanding of the history of political and ecclesiastical institutions’. And in 1693 he also expressed a concern that men of the church and the law should learn the historical backgrounds of the systems within which they worked.⁵⁷ Ostensibly, the third volume of *A Complete History* fulfilled this aim, at least from Kennett’s point of view. But by the time of its publication, the philological collaboration with Hickes was complete, and the two men had become opponents, perhaps because their divergent political and religious principles left them no common ground.⁵⁸ Hence, Hickes may have had ulterior motives in encouraging North to answer Kennett.

But North himself had his own motives, a principal one of which is revealed in this pamphlet. For it is grounded on a maxim or principle of natural justice that for posterity to come to a decision in the case of ‘popular Disputes, and factious Pretences, it is fit and reasonable that they should fairly hear both sides’ (p. 4).⁵⁹ And this maxim seems to ground North’s conception of historiography, which is hinted at in this pamphlet—that ‘all History should judge’, not merely recount bare facts, and that written evidence (documents) should be used so that a reader also can judge when an author disguises facts ‘to serve false Ends’ (p. 10). To show that Kennett had disguised facts for malicious purposes, North also provides ‘one

⁵⁶ See *supra* Chapter 3 sect. 3.1.

⁵⁷ Harris, ‘George Hickes’, p. 180, who described Kennett’s conception of etymological research as revolutionary for his day.

⁵⁸ See Harris, ‘George Hickes’, pp. 183, 186 n.65, who pointed out that Hickes sought ways of attacking Kennett in print as early as 1707. In 1708 he mentioned Kennett’s *Complete History* derogatorily but without mentioning Kennett’s name. Then in 1710 he made public their quarrels. In 1711 Kennett answered in print, provoking a bitter, private correspondence with Hickes, whom he continued to attack even after Hickes’s death.

⁵⁹ I.e., *audi alteram partem*, see *supra* Chapter 2 sect. 2.4.

Instance, out of multitudes' that concerns a particular legal case in which his brother Francis had presided as a judge (pp. 12–13).⁶⁰ It is to be noted, therefore, that even before his pamphlet was published, North had already begun to write a response to many other instances of Kennett's 'Falsity', although this response, which was completed in 1713, was not published until after his death.⁶¹

[NORTH] 1713

A Discourse of Fish and Fish-ponds, Under the following Heads, viz. I. Of the Situation and Disposition of the Principal Waters. II. The Manner of making and raising Pond-Heads, with their Dimensions, and how to secure the Banks. III. Of Sluices, Stews, Moats, Auxiliary Waters, and the Course of laying the Great Waters dry. IV. Of the Breeding and Feeding of Fish, and the Manner of stocking Waters. V. Of disposing of Fish, of the Management for Carriage, of Nusances to Ponds and Fish, of Frosts, and the Ways to save the Fish in them. VI. Of the Benefits and Improvements by Fish. Done by a Person of Honour. London, Printed for E. Curll, at the Dial and Bible against St. Dunstan's Church in Fleet-Street, 1713.

During North's lifetime Edmund Curll published all the re-issues of the above tract as follows: (1) a variant of the first edition, 1714, 8vo, with a different title page and an errata leaf listing twelve mistakes in the text;⁶² (2) a second edition, 1715, 12mo; and (3) a re-issue of the second edition, 1726, 12mo, appended, with its own pagination, to

⁶⁰ For the case, see also RN, *Examen*, p. 556, and RN, *Life/FN*, pp. 107, 164–5.

⁶¹ See *infra* Appendix C: NORTH 1740.

⁶² This variant was announced in *A Catalogue of All Books, Sermons, and Pamphlets, publish'd in May 1714....* (London: printed for Bernard Lintott, between the Temple Gates in Fleetstreet).

The Gentleman Farmer.⁶³ In each of these re-issues the title has been shortened to *A Discourse of Fish and Fish-ponds*. In the two 12mo re-issues the mistakes listed in the 1714 errata leaf have been corrected; but new errors have been introduced (e.g., 1726, p. 89 has ‘yonr’ instead of ‘your’). And because the 12mo re-issues were reset, they differ from the 8vo re-issues in punctuation, capitalisation and use of italic or roman. It is therefore possible that Curll published the smaller format re-issues without permission or authorisation.⁶⁴

Although North was not identified as an author in either the first edition or in any of the re-issues, he was named in Curll’s advertisement for *The Gentleman Farmer*, which appeared in the *Daily Journal* for 2 October 1732. However, this advertisement is misleading, because North’s name occurs at the end of the full title, thereby suggesting that he was sole author of the whole, not merely author of ‘a certain Method of improving Meadow Grounds ... by making it into Fish-Ponds’.⁶⁵

In the life of his brother John, North provides some pithy remarks about the alterations ‘for worse’ in the bookselling trade that may relate to his experience with Curll in relation to both this tract and the one following (see below), for the sentence that concludes his remarks is as follows: ‘I might touch other abuses, as bad paper, incorrect printing (no erratas, for those are out of fashion), and false advertising, all which, and worse, is to be expected, if a careful author is not at the heels’ of the publishing trade.⁶⁶

As for the tract itself, it concerns ‘Matters’ that ‘Exercise the Invention of a good Oeconomist, who will endeavour’ to turn ‘even

⁶³ The first tract in *The Gentleman Farmer* is a re-issue of *Discours of Husbandrie Used in Brabant and Flanders* by Richard Weston, who resided in the Low Countries between 1644 and 1649.

⁶⁴ For Curll as publisher, see Straus, *The Unspeakable Curll*, and Baines and Rogers, *Edmund Curll*; for a short account of the years 1706–14, see Ruhe, ‘Edmund Curll and his Early Associates’.

⁶⁵ In an edition of two tracts on angling, the editor referred the reader to *The Gentleman Farmer*, adding that the author was RN, as ‘I have been told by one that knew him’; see Hawkins, *The Complete Angler*, Part I, p. 283.

⁶⁶ RN, *Life/JN*, pp. 106–7, p. 107.

his Pleasures to Profit' (1714, pp. 32–3)—an allusion to Horace's formula, *utile dulci*. The 'Matters' under consideration are North's practices and experience in cultivating fish, practices that he himself had tested, that is to say, proved by experimental trial. But as he states, the subject matter is more restricted than the title of the tract suggests, because his practices and experience were 'in a Clay-Country, where are neither fresh Springs, nor Rivers; and *Carps* being the most proper Fish for the Waters of that Soil, I have made the advancing them chiefly my Care' (1714, p. [iii]).

North seeks to provide his readers with simpler ways of working, for as in 'Trades', where 'they find nearer Ways of doing Things, spending fewer Strokes, and less Time' so too in business 'every Man's Reason leads him to contrive Compendiums ... as I have done' (1714, p. 14). Hence, his tract, as well as the one on accounting (see below) form part of his efforts to improve practices involved in estate management during a period (1700–30) when most parts of England were suffering difficult rural conditions. According to Charles Wilson, Norfolk and Suffolk 'were furthest forward in the new husbandry' as exemplified by North's neighbours, the Cokes at Holkham and the Walpoles at Houghton.⁶⁷

But North's experience in the cultivation of fish began before 1677, for 'at the Command of my Lord *North*', he proceeded 'to the making one great Pond and one Stew at *Catledg*, which are still to be seen, but neglected' (1714, p. 18, 1726, p. 22).⁶⁸ His tract thus records, 'as Short and intelligibly as conveniently I could, the best of my Knowledge, contracted 20 Years Practice and Experience, of Fish and Waters' (1714, p. 79). According to this statement, the period in question dates from about 1693, when North commenced laying out the gardens around Rougham Hall. In a reconstruction of those gardens, Tom Williamson found no traces of any fish ponds in the

⁶⁷ Wilson, *England's Apprenticeship*, pp. 246–9.

⁶⁸ Randall, *Gentle Flame*, p. 75, inferred that the command was made by DN (1), perhaps because RN spent part of his childhood at Kirtling ('Catledg'), the estate of his grandfather. But the command could have been made by RN's father DN (2), to whom the estate descended in 1666 and, then, in 1677, to his eldest son Charles, who was no friend to any of his brothers.

immediate vicinity of the Hall; but he did discover that ‘a number of rectangular depressions, badly damaged and cut into by later brick pits, exist in the woodland to the north west’.⁶⁹

It is to be noted that North uses the second term in the Horatian formula—profit—not only to mean money derived from selling fish but also to include well-being, as in the benefits for ‘the greatest Epicures in Gardening’ (1714, p. 27), an apt description of some of his neighbours. For on the one hand, an estate is enhanced by fish ponds and related adjuncts (e.g., moats) which ‘Ornament and Delight ... beyond Imagination’; and on the other hand, the ‘Mastery’ of fish is also an entertainment, for it directs ‘the Minds of a Numerous Family to terminate in something not inconvenient, and it may be divert them from worse’ (1714, pp. 25, 73). And since human nature was ‘not made perfect, but must live in perpetual Disease; the only Point is, which Way to lessen it; and that must be by Employment, which diverts the Sense of our innate Misery’. Hence, North’s advice is to

...court Business, if you would pass for an Epicurean, and let it be such as brings Comfort to Nature, and not Pain and Torment in the Consequence; that is to say, lawful, profitable, obliging and temperate. So you avoid offending the Publick, increase your Store, win your Friends and Family, and preserve your Health; all which, I take it, are accomplish’d, in great Measure, by the Mastery of Fish [1714, pp. 74–5].

In addition to Epicures in gardening, North addresses some comments to ‘Lovers of Art’, that is, those who delight in devising mechanical ‘Engines’, for example, to lift great quantities of water. And he also indulges himself in an allusion to sailing, one of his special pleasures, when he writes about moving upon water ‘in Boats, either in calm Weather, or with some Wind that stirs the Water, and gives a Power of employing somewhat of Sail, after a Romantick Way’ (1714, p. 27). Finally, he indicates that if his tract provides ‘Satisfaction and Diversion’ to his friends, then he might ‘add somewhat farther concerning the Nature of the several Sorts of

⁶⁹ Williamson, ‘Roger North at Rougham’, p. 288.

Fish I deal in, the Ways of taking them, of Nets, Angling, Engines for clearing Waters, and other Particularities that I have prov'd [i.e., tested]' (1714, p. 79). However, there seems to have been no further publication by North on this aspect of estate management.

[NORTH] 1714

The Gentleman Accomptant: Or, An Essay To unfold the Mystery of Accompts. By Way of Debtor and Creditor, Commonly called Merchants Accompts, And Applying the Same to the Concerns of the Nobility and Gentry of England. Shewing, I. The great Advantage of Gentlemens keeping their own Accompts, with Directions to Persons of Quality and Fortune. II. The Ruin that attends Men of Estates, by neglect of Accompts. III. The Usefulness of the Knowledge of Accompts, to such as are any way employed in the Publick Affairs of the Nation. IV. Of Banks; those of Venice and the Turkey Company. V. Of Stocks, and Stock-Jobbing; the Frauds therein detected. VI. A short and easy Vocabulary of Certain Words, that in the Language of Accompting take a Particular Meaning. Done by a Person of Honour. /—Do well unto thy self, and Men will speak well of Thee./
 LONDON: Printed for E. Curll, at the Dial and Bible against St. Dunstan's Church in Fleetstreet 1714. Price 4s. Plain, or 5s. neatly Bound and Gilt.

Published in May 1714,⁷⁰ this work was re-issued in 1715 and 1721, the identity of the author being indirectly divulged by the publisher Curll in an advertisement for the 1721 re-issue.⁷¹ Although the original manuscript is preserved, (UK:Lbl) Add MS 32528: ff. 1–94, no comparison has been made between it and the printed work, although this may be a desideratum given Curll's practices as a publisher. According to Robert Parker, the book itself is unusual 'in

⁷⁰ *A Catalogue of All Books, Sermons, and Pamphlets, publish'd in May 1714....* (London: Printed for Bernard Lintott, between the Temple-Gates in Fleetstreet).

⁷¹ Strauss, *The Unspeakable Curll*, p. 225.

its concern with accounting for landed estates', including what North called their 'managery'; 'in the application of double entry to estate accounting'; in its inclusion of a 'vocabulary' of accounting terms; and in its literary expression of 'a scholar's sense of curiosity' about the practical art of accounting.⁷²

In 'Of Etimology' North advises that to avoid 'fulsom circumlocutions', terms of art should be explained 'by a vocabulary apart'.⁷³ And in *The Gentleman Accomptant*, the main text is indeed followed by 'A Short and Easy Vocabulary of Certain Words, that in the Language of Accompting take a Particular Meaning'. Consisting of twenty-six unnumbered pages of more than 100 terms, North provides definitions and, in some cases, gives an '*Etymon*'.⁷⁴ Although a brief explanation of 'hard words' had been included in Stephen Monteage, *Debtor and Creditor Made Easie....* (London, 1675),⁷⁵ Parker regarded North's 'Vocabulary' as 'the first glossary or dictionary of accounting in English'.⁷⁶ Parker also classified the terms therein 'slightly arbitrarily' into four groups: (1) words related to 'merchants accompts', that is, double entry bookkeeping; (2) words related to Exchequer charge and discharge accounting; (3) commercial and legal words; and (4) mathematical words.

As William Letwin pointed out, the mercantile training and experience of Dudley North enabled Roger North to accumulate knowledge of accounting and to understand financial books, and he sometimes refers to this expertise in various of his writings.⁷⁷ Hence, Letwin raised the possibility that some of the material in *The Gentleman Accomptant* may have derived from Dudley North, a possibility also canvassed by Richard Grassby, who supposed that in writing *The Gentleman Accomptant*, Roger North not only relied on

⁷² Parker, 'Roger North', p. 33.

⁷³ See *supra* RN, 'Of Etimology', f. 25v.

⁷⁴ E.g., 'BUMMERIES, or as the *Etymon* is, *Bottom Marine*'.

⁷⁵ Monteage was agent to RN's uncle Christopher Hatton, 1st viscount Hatton, so RN may have known him and his work.

⁷⁶ Parker, 'Roger North', pp. 39–40.

⁷⁷ Letwin, *The Origins of Scientific Economics*, pp. 186, 188.

some of his brother's unpublished writings but also used his brother's ledger to illustrate his book.⁷⁸ Although Grassby provided no evidence for his statements, Parker believed they were plausible.⁷⁹ But neither were aware that North used the double-entry system when keeping the Account Book, closed in 1692, that itemises the final record of the executors' administration of Lely's estate.⁸⁰ Until hard evidence is forthcoming, therefore, I see no reason for doubting North's explanations as hinted here and there in his book.

For example, in the 'Preface' he recounts two serendipitous events. First, he happened to have a conversation with 'Mr. H. TINNE, who was Treasurer to her Majesty the late QUEEN Dowager',⁸¹ and who had introduced 'the Method of Debtor and Creditor' when keeping her accounts. Second, he happened to be at the Custom house (see also p. 57), when one of 'the active Commissioners' recommended the aforementioned method. As a consequence of these conversations, North became curious to find out

...wherein this wonderful Virtue of a Regular Accompt consisted; and at length by Discourse, Books, and Trials, he had the Satisfaction to think, he had gained a clear Notion of it; and then by a Course of Practice, in small Affairs of his own, and great Ones of others, he became capable to prove, what he had done by a General Balance, which is a Consummation of Pleasure, this Art affords (pp. v–vi).

The two main actors whom North mentions above would have been Henry Thynne⁸² and Dudley North, the positions of both in Customs

⁷⁸ Grassby, *The English Gentleman in Trade*, p. 12.

⁷⁹ Parker, 'Roger North', p. 46.

⁸⁰ See Dethloff, 'The Executors' Account Book', p. 16.

⁸¹ I.e., Catherine of Braganza.

⁸² He was the only surviving son of Thomas Thynne, baron Thynne and 1st viscount Weymouth.

having been secured in 1684 by Francis North and by George Savile, marquis of Halifax.⁸³

As for the matter of using his brother's ledger, this could be proved or disproved by comparing the specimens in North's book with Dudley North's extant ledger.⁸⁴ But until then, we might assume that North's specimens were taken from, or modelled on, his own ledgers, waste books or other such material used for managing his several estates. Moreover, in one case he specifically indicates that

The following Specimen of an Accompt regularly kept [pp. 130–50], is all pure Invention; and therefore must not be look'd upon as an exact Picture of any one's Dealing, or to Censure Proprieties with such Justice of the Managery, as if it were real. Nor is it easy to be so done; for this fictitious Work is more troublesome, than a great deal more of real Book-keeping would be; for in that Truth, and here Imagination and Invention guide.... (p. 127).

As this passage indicates, there is more to North's book than meets the eye, for in addition to autobiographical hints (e.g., p. 259), it also includes information concerning legal affairs and terms. Moreover, like his tract on cultivating fish, the book itself contains numerous insights into North's pattern of thought.

For example, there is a concern with honesty, for although 'Gentlemen of Estates are not strictly accountable' as merchants and factors are, yet 'setting aside common Discretion, which is a sort of Law to every one, and in all States of Human Life' (p. 6), decent accounts should still be kept 'in Time, and with the utmost Rigour of Truth and Justice', so as to be 'a legal Evidence' against frauds (pp. 44–5). Then, because not all men will keep decent accounts, there is a concern with human failings, some of which North lists (pp. 85–6), although he declines exaggerating men's 'various Infirmities'. And finally, there is a concern to benefit posterity. For even though the art of accounting is 'Pragmatick', not 'Analytic'

⁸³ Grassby, *The English Gentleman in Trade*, pp. 157–8.

⁸⁴ See Grassby, *The English Gentleman in Trade*, pp. 361–2. Neither he nor Parker, 'Roger North', made the comparison.

(p. 3), nevertheless, when well conducted it has a certain kind of beauty (pp. 9, 75), so that

...Lovers of Art have that to say for themselves, which no other Species of Lovers can pretend to, which is to be Kind and Communicative. And on that Account, thinking other Persons may possibly, in his way, be as Amorous as himself, has ventured to express in Writing, tale quale [i.e., such as it is], the best of his Skill, and to make a general Present of it; supposing that some may be, as he was, fired by Accident. And that is the End of his being thus far Communicative, not without Hopes (as much as in [this] Art, as he is) of enjoying in Common with them, a small Portion of Self-Consolation under the Old Law, viz. That

Wisdom is justified of her Children (p. vi).⁸⁵

⁸⁵ Matthew xi.19; see also *supra* RN, 'Of Etimology', f. 51.

APPENDIX C: WRITINGS BY ROGER NORTH PUBLISHED POSTHUMOUSLY
BEFORE 1900

NORTH 1740 [ed. by M. North]

Examen: or, An Enquiry into the Credit and Veracity of A Pretended Complete History; shewing The perverse and wicked Design of it, and the Many Falsities and Abuses of Truth contained in it. Together with some Memoirs Occasionally inserted. All tending to vindicate the Honour of the late King Charles the Second, and his Happy Reign, from the intended Aspersions of that Foul Pen. By the Honourable Roger North, Esq; London, Printed for Fletcher Gyles against Gray's-Inn Gate in Holborn. MDCCXL.

In 1711 North sought to encourage 'an able judicious Pen' to answer the author of the third volume of *A Complete History of England*, published anonymously in 1706 but written by White Kennett.¹ But North was already writing *Examen*, a critical enquiry in which he rebuts Kennett's libels ('*Abuses of Truth*') and, in particular, his factual inaccuracies concerning the common law. In the process of correction, he intersperses details of events that took place during the reign of Charles II, as well as 'Characters of active Statesmen' involved in those events. An announcement in the *London Evening Post* for 13 December 1740, indicated that the book was published 'This Day', 'a few Copies' having been printed 'on Royal Paper for the Curious'.

The *Examen* opens with a frontispiece portrait of North, engraved by George Vertue after the portrait painted in 1680 by Peter Lely. It also includes an epistolary dedication to Sir Thomas Hanmer, Bart.,² followed by an 'Advertisement'. These two inclusions were

¹ See *supra* Appendix B: [NORTH] 1711.

² I.e., 4th baronet, of Mildenhall, Suffolk, chief of the Hanoverian Tories. A letter from RN to Hanmer, dated 1 April 1718, is still preserved (US:NHb) OSB MSS File. Hanmer's mother Peregrine was a daughter of Henry North; see the will and

added by the editor Montagu North, who in the latter addition claimed that

WHEREAS it may perhaps be insinuated, that this Book, as printed, may not be agreeable to the Author's MS, or that some Passages may be inserted here which are not to be found in the Original; it was thought proper to inform the Public, that, in order to obviate any such Objection, the Original MS, as left finished by the Author, will be shortly deposited in the Library belonging to Jesus College in *Cambridge*, where, whoever shall entertain any Doubt of the Fidelity of the Publisher, will be permitted to peruse it, that he may receive entire Satisfaction as to that Point.

This 'Advertisement' notwithstanding, the editor interfered in at least three ways. First, he added material from North's 1711 pamphlet.³ Second, he omitted an essay attached to the original manuscript, entitled 'Notes on Reading Dr. E[char]d's History'.⁴ Third, he added most of the footnotes to the main text. And since the original manuscript still belongs to Jesus College, Cambridge, a comparison between it and the printed text may uncover further evidence of editorial interference.

Some material relating to the *Examen* still survives in manuscript and includes the following three items: (1) 'Advertisement' (UK:Lbl) Add MS 32510: ff. 2–21v, at the head of which is a 'Note' that 'the matter of this is taken into a pamphlet

sentence of the latter (UK:Ltna) Prob/11/425 and Prob/11/428. She inherited the Mildenhall estate which then passed down to Hanmer. For some details of Henry North, see see RN, *Life/FN*, pp. 195–6, 436, 481; see also Sancroft, *Familiar Letters*.

³ See *supra* Appendix B: [NORTH] 1711.

⁴ I.e., Laurence Echard, *The History of England from the Entrance of the Romans to the Establishment of K. William and Q. Mary* (3 vols., London, 1707–18). According to Chan in RN, *Life/FN*, p. xxii, when MN (2) was copying RN's *Examen* in preparation for publication, he made a copy of the 'Notes'; and these, together with a copy of some leaves of the preface to the *Examen*, are preserved at (UK:Nr).

about the life of Mr Lock⁵ and a treatise in 3 parts against the Compleat history, tituled Examen; except the History of the Lives of the Lord Chancellors not taken notice of then.’⁶ (2) ‘Advertisement’ (UK:Lbl) Add MS 32512: ff. 166–181, on the events of 1682 relating to Dudley North’s election as sheriff of London and intended for insertion in the *Examen*; and (3) criticisms of passages in Kennett’s *Complete History of England*, also intended for insertion in the *Examen* (UK:Lbl Add MS 32525, various folios).

As item one above verifies, North began to work on his answer to Kennett sometime before 1711, and he completed it sometime before 14 December 1713, when he wrote to Hilkiah Bedford, Jr.,⁷ then residing in Gloucester Street, London, that

I shall leav the Examen wholly to your self and the good Dean [George] Hickes.... The preface is ready and will come up by the carrier.... Pray be a chancellor and judg the equity of language, when you find occasion; and what title, or entrance you will give it....⁸

If, as this letter suggests, the text of the *Examen* was then complete, why did North withhold publication during his lifetime? Roger Schmidt, who seems to have been the first critic to consider this question, speculated that North probably wished to avoid adverse

⁵ I.e., [NORTH] 1711 regarding Le Clerc’s *Life*; see *supra* Appendix B.

⁶ I.e., *The Lives of all the Lords Chancellors, Lord Keepers, and Lords Commissioners of the Great Seal of England... By an Impartial Hand* (2 vols., London, 1708). Chan in RN, *Life/FN*, pp. 107, 170, 173, attributed this work to John Oldmixon; but the author was Peter King, a barrister at the Middle Temple (1698) who assisted at the trial of Henry Sacheverell for seditious libel (1710) and defended William Whiston at his trial for heresy (1713).

⁷ I.e., the non-juring divine, to whom Hickes bequeathed his manuscripts, along with letters and copies of all his printed works. Bedford’s father, also named Hilkiah, was a mathematical instrument maker and a member of the Clockmaker’s Company, which included Henry Wynne, who learned from FN how to make barometers; see Brown, ‘Guild Organisation and the Instrument-Making Trade’ and *supra* Chapter 1 sect. 1.3.

⁸ (UK:Ob) MS Rawlinson Letters 42: f. 37, a volume of letters that Richard Rawlinson gave to a son of Hilkiah Bedford, Jr.

consequences such as those that befell his friend Bedford, who in 1713 had been put on trial and sentenced to three years' imprisonment as the supposed author of a book defending hereditary monarchy.⁹ Because Schmidt too readily assumed that North would have been one of those many Tory 'ideologues' who were routinely prosecuted until 1750, he completely ignored the possibility that North feared he would be tried not for political views (the supposed Jacobitism attributed to him by Schmidt) but for seditious libel—a subject now clarified by the important work of Philip Hamburger and a matter long overdue for investigation in relation to North and some of his writings.¹⁰

At least one extract from the *Examen* was published in the latter part of the eighteenth century.¹¹ And at least one critical notice appeared anonymously in *The Retrospective Review* (1819), 7: 183–217, (1820), 8: 1–30. This latter notice, together with the 1826 re-issue of North's lives,¹² attracted the attention of two influential nineteenth-century Whig critics.¹³ As a consequence of their views, Augustus Jessopp described the *Examen* as an 'Apology' for Charles II and a 'Vindication' of Francis North.¹⁴ But as Schmidt rightly pointed out, North's commentary is not party polemic but 'in fact a perceptive analysis of the historiography of his contemporaries'.¹⁵

⁹ Schmidt, 'Roger North's *Examen*', p. 61, who erroneously identified the author as William Harbin. The real author was George Harbin, non-juring chaplain and librarian to Thomas Thynne, 1st viscount Weymouth.

¹⁰ Hamburger, 'The Development of the Law of Seditious Libel'. For historical background concerning written defamation, see also Baker, *An Introduction*, pp. 436–7, and Macdonald, 'The Law and Defamatory Biographies in the Seventeenth Century'.

¹¹ I.e., the legal argument concerning passive obedience in RN, *Examen*, pp. 329–36, which was included in Jones, *The Scholar Armed*. For Jones (a dogmatist), see Kassler, *The Science of Music in Britain*, pp. 589–607, and Kassler, *Music, Science, Philosophy*, pp. 200–222.

¹² See *infra* NORTH 1742 and 1744.

¹³ See *supra* Introduction.

¹⁴ Jessopp, 'Roger North', p. 623.

¹⁵ Schmidt, 'Roger North's *Examen*', p. 59.

NORTH 1742 and 1744 [ed. by M. North]

The Life of the Right Honourable Francis North, Baron of Guilford, Lord Keeper of the Great Seal, under King Charles II. and King James II. Wherein are inserted The Characters of Sir Matthew Hale, Sir George Jeffries, Sir Leoline Jenkins, Sidney Godolphin, and others the most eminent Lawyers and Statesmen of that Time. By the Honourable Roger North, Esq; //Unus oculatus testis præstat auritis decem.// London, Printed for John Whiston, at Mr. Boyle's Head in Fleet-Street. MDCCXLII.

The Life of the Honourable Sir Dudley North, Knt. Commissioner of the Customs, and afterwards of the Treasury to his Majesty King Charles the Second. And of the Honourable and Reverend Dr. John North, Master of Trinity College in Cambridge, and Greek Professor, Prebend of Westminster, and sometime Clerk of the Closet to the same King Charles the Second. By the Honourable Roger North, Esq; //Ea complectitur quibus ipse intersuit. Cic. de leg. Lib. 1// London, Printed for the Editor, and sold by John Whiston, at Mr. Boyle's Head in Fleet-street. MDCCXLIV.

The 1742 book opens with an epistolary dedication to Francis North, first earl of Guilford and seventh lord North,¹⁶ whereas the 1744 book opens with an epistolary dedication to Dudley North, Esq., M.P. for Oxford.¹⁷ Both dedications are signed by the editor, Montagu North, who provided no statement of his editorial principles. The life of Francis North was afterwards reduced to an octavo format and published in two volumes as a 'second edition' in 1808 and as a 'third edition' in 1819. In 1826 all three lives were re-published, in three volumes, octavo, in a so-called 'new edition' containing a preface, signed 'Fig-tree Court, Temple', and 'Notes and Illustrations, historical and biographical'. These additions, which

¹⁶ I.e., a grandson of FN.

¹⁷ I.e., a grandson of DN (3), whose son Dudley also had been an M.P. for Oxford.

were anonymous, have been attributed to Henry Roscoe,¹⁸ who also seems to have promoted the 'new edition' in at least one contemporary publication.¹⁹ The 1826 'new edition' then formed the basis of the 1890 'edition' of Augustus Jessopp, who added some additional matter.²⁰

In short, Montagu North's edition has had a long life, being modified only by added prefaces, introductions, notes and other supplements. As a result, the 1740 edition has played a crucial role in the reception of North as a writer, even after the bulk of Roger North's surviving manuscripts became accessible to the public between 1885 and 1947.²¹ In consulting those manuscripts for new editions of two of the lives, Peter Millard and Mary Chan drew attention not only to the editorial interference of Montagu North but also to the fact that Roger North had actually produced a number of different versions of each of the lives.²² Which version, then, did the editor choose as his copy text?

This problem was particularly acute with the life of Francis North, of which six manuscript versions are extant. In her study of these different versions, Chan concluded that what Montagu North had produced was in fact a rambling and anecdotal 'new version', because he treated his father's manuscript versions 'as so much source material to begin on afresh' with the aim of linking his version of North's lives to the *Examen* so as to form a history of the reign of Charles II. Unknown to Chan, Edward Almack, a Fellow of the Society of Antiquaries, had previously drawn attention to the

¹⁸ For Roscoe, see further *infra* NORTH 1824.

¹⁹ See, e.g., 'Lives of the Norths', *New Monthly Magazine* (1826), 17: 459–67, especially p. 460, where it is stated that 'such misrepresentations as are committed' by RN 'are pointed out and corrected in the notes of the editor, in which selections are judiciously made, for the purposes of illustration and comparison, from the pages of ... other writers of that time'.

²⁰ See also *infra* NORTH 1887.

²¹ See, e.g., Halliday, 'Francis North', who utilised the 1826 version in a memoir published in 2004.

²² Millard, 'The Chronology of Roger North's Main Works'; Millard in RN, *Life/JN*, pp. 3–4, 38–41; and Chan in RN, *Life/FN*, pp. xii–xxxiii.

problematic nature of Montagu North's editorial practices, when he wrote: 'The fact is that Roger North's "Life" of the Lord Keeper has never been issued.' Almack could make this claim, because he 'had before him' the 'original manuscript ... in ten volumes', namely,

...that used by the son Montagu, as the omission from the printed work of many long passages marked with a pen for omission proves. Taking what Montagu has retained, I can best say that Roger North left a body fed and clothed, and his son Montagu produced a skeleton with scant remains of flesh. Montagu sometimes started off in the same words, but quickly modified it all to his own narration of leading facts. Working with this manuscript as his basis, he must have prepared an entirely fresh copy for his printer.²³

When Almack wrote this description, it is not clear that he actually owned the manuscript. But at some point he did acquire it, because in 1947 the manuscript was purchased by the librarian of St. John's College, Cambridge, at the sale of the property of 'the late' Mrs. Almack;²⁴ and it is this version that Chan herself used as her copy text. Although I have not discovered how the ten-volume manuscript came into the hands of Almack, there are some tantalising clues in the manuscript itself, which has previous ownership marks or comments, including bookplates, as follows: Henry Poley (volume 9);²⁵ the earl of Sheffield (volumes 1, 3, 4, 5,

²³ Almack, 'Roger North's Life of his Brother', p. 201.

²⁴ Her property, along with that of several others, was sold at auction by Messrs. Sotheby and Co., 34 and 35 New Bond Street, London, 23 and 24 June 1947.

²⁵ Since volume 9 consists of law reports, it is probable that Henry Poley was the same person who was called to the Utter Bar at the Middle Temple in 1678 and elected reader for 'next autumn' in October 1703; see Martin, *Middle Temple Records*, vol. 3, pp. 1312, 1477, 1496, 1498. From Poley's armorial bookplate, Almack, 'Roger North's Life of his Brother', p. 201, assumed he was one of 'the well-known Poley family of Suffolk'. This, too, seems probable, because by the will of Henry North of Mildenhall, Suffolk, the lawyer Henry Poley was to hold a sum of money in trust; see (UK:Ltna) PROB/11/425.

9); lord Glenbervie (volumes 1, 3, 4, 5); Edward Almack (volumes 1, 3, 4, 5, 9); and Hugh Percival Wharton Gatty (volumes 1, 9).²⁶

According to Roger North's annotation in volume 9, not long after Francis North's death, 'this book was lent to Mr Pooley, by one of his Lordship's executors; and after the death of the said Mr Pooley, honourably restored by his executors [to the estate of Francis North], notwithstanding the armes [i.e., armorial bookplate] inconsiderately prefixed'.²⁷ Henry Poley, therefore, was not properly an owner. Rather, the actual owner was the son, namesake and heir of Francis North, as Roger North's annotation makes clear.²⁸ It is not surprising, therefore, that the ten-volume manuscript passed into the hands of the descendants of Francis North, as appears from the next two names, John Baker Holboyd, first earl of Sheffield, statesman and friend of the historian Edward Gibbon; and Sylvester Douglas, baron Glenbervie, barrister and politician. For both their wives were daughters of the prime minister Frederick North, eighth lord North and second earl of Guilford.²⁹ Indeed, on 10 January 1817 Glenbervie recorded his intention (never fulfilled) 'to publish a new edition of Roger North's *Life of the Lord Keeper* from the original manuscript in my possession'.³⁰

After Glenbervie's death, his library was auctioned in 1823 on 13 June and 5 July, respectively;³¹ and in 1829 the residue was sold

²⁶ See Chan in RN, *Life/FN*, pp. 495, 509 (Poley); pp. 499, 503, 505, 507, 509 (Sheffield); pp. 499, 503, 505, 507 (Glenbervie); pp. 499, 503, 505, 507 (Almack); pp. 499, 501, 509 (Gatty, i.e., 'Hugo Percivallus Wharton Gatty').

²⁷ FN's executors were RN, DN (3) and MN (1); see (UK:Ltna) Prob/11/380.

²⁸ ff. 48v–68v in RN, 'Architecture' (UK:Lbl) Add MS 32540: ff. 69–80v (early period) has been edited by Colvin and Newman in RN, *Of Building*, pp. 122–41, where, at p. 139, RN writes about himself: 'I knew one who had a great trust for a minor peer [FN's son and namesake] ... to which belonged many books, papers and accounts, and he [RN] assigned one whole room of his house [Rougham Hall] onely to the buissness of that trust'. Note that this statement dates the essay after the death of DN (3), not before as Colvin and Newman assumed. See below for the dispersal of the 'many books, papers and accounts'.

²⁹ Sheffield was married to Anne North, and Glenbervie, to Catherine Anne North.

³⁰ Bickley (ed.), *The Diaries of Sylvester Douglas*, vol. 2, p. 213.

³¹ (UK:Lbl) S.-C.E. 19(2) and (3).

as part of the ‘united libraries’ of various owners,³² including the philhellene Frederick North, fifth earl of Guilford, whose manuscripts were afterwards sold on 8 December 1830 and four following days.³³ One of the main purchasers at this sale was the antiquary and bibliophile Sir Thomas Phillipps.³⁴ And a contemporary of Almack, W. Roberts, surmised that the ten-volume manuscript was among one of the several dispersals of the massive collection of Phillipps. However, he was unable to provide verification, because his set of Phillipps’ sale catalogues was at the binders.³⁵

Hence, there is a gap to be filled in between the time of Glenbervie’s death and the time that Almack acquired the ten volumes, because the fourth person who left a mark on those volumes was Hugh Gatty, lecturer in history and from 1937 librarian of St. John’s College Cambridge, who bequeathed the book to the library in 1948. It is possible, however, that the gap could be filled in by investigating the large break-up of the manuscript collections at both Wroxton Abbey (after the lease was terminated in 1932) and Kirtling Hall, the two estates that passed from Francis North to his descendants.³⁶

As indicated above, Chan’s 1995 edition of North’s life of Francis was made from the St. John’s College manuscript. Unlike Montagu North’s ‘edition’, this final version consists of a more or less chronological account of the life (Roger North’s words are

³² The seller was Thomas Thorpe, 36 Bedford Street, Covent Garden, London, (A:Nk).

³³ See (UK:Lbl) S.-C.E. 40 (1).

³⁴ Munby, *Phillipps Studies I–V*, no.3, p. 56 *et passim*.

³⁵ See the brief note by W. Roberts, *Notes and Queries* (18 July 1908), 10 series x, p. 57. If Phillipps once owned the manuscript, then he could have purchased it directly from the bookseller Thomas Rodd; see Munby, *Phillipps Studies I–V*, no. 3, p. 47.

³⁶ For details, see Pitcher, *Samuel Daniel: The Brotherton Manuscript*, pp. 8–12, who did not include the ‘North Heirlooms’ at Wroxton Abbey which were sold by Sotheby’s on 13 November 1922, lots 543–846; see Ricci, *English Collectors*, p. 95 n.1.

‘current’ or ‘series’) followed by separate chapters organised by subject matter, the majority of which were designed ‘to exhibite all his Lordship’s wrightings in one place or another’.³⁷ And by ‘wrightings’ North means any note, memorandum, draft, fragment, scrap, public or private, which he had transcribed between 1686 and c.1692 and which in the final version he included with accompanying commentaries of varying lengths as required. As a consequence, the last version is both a life and works, the works providing an evidential basis for statements in the life.

NORTH 1753 [ed. by M. North]

A Discourse of the Poor, Shewing the Pernicious Tendency of the Laws now in Force for their Maintenance and Settlement: Containing likewise, Some Considerations relating to National Improvement in general. By the late Hon. Roger North, Esq; London: Printed for M. Cooper in Pater-noster Row; and Sold by by [sic] W. Craighton in Ipswich. 1753.

In ‘The Preface’ (pp. iii–viii), dated 22 March 1753, the editor, ‘Mount. North.’, referred to North’s ‘*last Revisal of these Papers*’ which omitted his proposed scheme for the support and maintenance of the poor. But the editor then stated that he ‘*found amongst his loose Papers a Hint or two, touching some hard Cases which ... might happen upon ... Repeal [of the poor laws]*’; therefore, ‘*I have not omitted them*’. The editor also assumed that the time in which the *Discourse* was written ‘*must be before, or soon after the Revolution; as the then present State of the Town of Stow in the Wold, as described by the honourable Author, must preceed [sic] their being forced by Sir Richard Atkins*³⁸ *to make a Poor’s Rate*’.

³⁷ RN, *Life/FN*, p. 144.

³⁸ I.e., Robert Atkyns, chief baron of the Exchequer, who retired from the bench in 1694 and settled in Gloucestershire. According to a note (p. 42) added by MN (2),

As for the work itself, the author's purpose was

...to examine the Condition of the Nation with Regard to the Laws made, and in Force, for Maintenance of the Poor, and their Settlements; and to shew that all the People of *England*, as well the Poor as Rich, are great Sufferers by them; and, unless this Constitution be reformed, that Poverty and Desolation of the whole must succeed; and, lastly, propose the easiest and softest Methods, I can think of, for compassing this nice Business. But, in the Process, touching upon several Matters incidentally relating to National Improvements (p. 1).

Holdsworth has provided historical background to the various statutes relating to the poor law.³⁹ And Richard Grassby has briefly discussed Francis, Dudley and Roger North's considerations of the poor law in the context of some opinions expressed at the time.⁴⁰ Locke, for example, adopted a 'harsh attitude to the poor, because he believed that work distinguished men from animals'.⁴¹ But Roger North opposes punitive laws; and in a long digression (pp. 19–30), he not only argues that 'Punitive Laws do not regulate so effectually, as Laws of Encouragement' (p. 19) but also applies the argument to the 'Generality of Mankind', that is to say, the 'Common Men', for whom a law should be such as to 'lay their Interest before them so plainly that they cannot overlook it' (p. 21).

In addition to other digressions of an historical nature, there is one that concerns 'true *English* Policy' which North contracts into two maxims for conserving 'Peace and Happiness': (1) 'Never to suffer the Laws to be undermined, either by Court Flatteries, or popular Tumults; especially as relate to the Right of Government';

'Lord Chief Baron *Atkins* ... acted as a justice, and lived within a Mile of the Town [Stow in the Wold in Gloucestershire]' and 'was the Person who first obliged them to make one [a poor rate] in King *William's* Time'.

³⁹ Holdsworth, *A History of English Law*, pp. 349–54, 426, who apparently was unaware of RN's tract.

⁴⁰ For FN's considerations, see RN, *Life/FN*, pp. 22, 465–6.

⁴¹ Grassby, *The English Gentleman in Trade*, pp. 247–50, p. 249 and n.86. But he overlooked Hale, *A Discourse touching Provision for the Poor*, [pp. A 2–A 3], who was against punitive laws on religious grounds.

and (2) 'avoid all Manner of Wars that engage the Body of the People'. Even though North admits that his explanation of the two maxims is very brief, yet he hopes it is sufficient 'to shew that we have no Need of Shifts to deal with our People'. For 'Honesty and Justice, in Place and Proceeding, cannot fail to have the superior Party; and so we need not be afraid of a Plethory of People, but, rather, of a tabid Wasting of them; which is certainly the worst of Diseases in a Commonwealth' (pp. 83–4).

To the best of my knowledge, there still is no study of the genesis and writing of the *Discourse* and no systematic comparison of its contents with some portions of North's surviving manuscripts relating to the poor.⁴² Even so, a number of critics have detected the influence of Dudley North.⁴³ According to William Letwin, for example, Roger North's *Discourse* was 'based very largely' on the ideas of his brother, as found in a manuscript intended to have been published as a sequel to the latter's *Discourses upon Trade*.⁴⁴ According to Richard Grassby, North 'borrows' arguments from all of Dudley North's writings, though he also queries or updates some of his brother's points.⁴⁵ And according to George Chosky, following

⁴² Grassby, *The English Gentleman in Trade*, p. 287 n.10, considered only those folios in three manuscripts as follows: (1) two versions of RN's life of DN (3) (UK:Lbl) Add MSS 32512 (dated 1709) and 32513 (middle period?), and a miscellany relating to the work and life of DN (3) (UK:Lbl) Add MS 32522 (early period?). But there also are folios in two other manuscripts: (UK:Lbl) Add MSS 32523: ff. 82–85v, 86–93v, 94–101v and 32524: ff. 43v–81v. The latter seems to have been the copy text of MN (2), though this remains to be verified by comparing it with the published version.

⁴³ Korsten, 'Roger North', p. 25, asserted that the ideas of DN (3) are 'clearly discernible'; but he afterwards claimed, incorrectly, p. 268 n.267, that there are 'clear resemblances' between the *Discourse* and a 1670 tract written by Joshua Child.

⁴⁴ Letwin, *The Origin of Scientific Economics*, p. 272 n.1. For the manuscript folios in question, see Grassby, *The English Gentleman in Trade*, pp. 317–20: 'Some Notes concerning the Laws for the Poor' (UK:Lbl) Add MS 32512: ff. 124v–130v, which is in RN's hand, uses a title ('Some Notes') that is found in some of RN's writings from his early period, and is incorporated in the 1709 version of the life of DN (3). But Grassby's attribution to DN (3) is probably correct, at least for the body of the text if not for the title.

⁴⁵ Grassby, *The English Gentleman in Trade*, p. 249 and n.91.

Letwin, the *Discourse* represents an intended second volume to Dudley North's *Discourses upon Trade*; it was 'probably' penned by him 'in the mid- to late-1680s' and 'finally published in highly edited form' in 1753.⁴⁶ However, all these assertions remain to be verified.

Recalling Roger North's practice of developing the ideas of his three brothers,⁴⁷ the following sequence deserves consideration. First, Dudley wrote short notes on the subject of the poor but was unable to develop the notes due to illness. Second, Roger transcribed and then edited the notes around the time of his brother's illness and death (1690–91). Third, he subsequently expanded on his brother's ideas, incorporating some of them when writing a first version of the *Discourse*. Fourth, at some later time he produced the final revision; and this revision was included in the papers inherited by Montagu North. Hence, just as in his writings on music, North, from short notes by a brother, fulfils his filial duty by developing and expanding upon the hints therein and, in so doing, has a just claim to authorship.

NORTH 1824 [ed. by H. Roscoe]

A Discourse on the Study of the Laws, by the Hon. Roger North. Now first printed from the original MS. in the Hargrave Collection. With Notes and Illustrations by a Member of the Inner Temple. London. Printed [by T. White, Johnson's Court, Fleet Street] for Charles Baldwyn, Newgate-Street. MDCCCXXIV.

Two letters from North to his son Montagu have some bearing on this short tract.⁴⁸ In the first, dated Rougham, 17 April 1732, he writes: 'As to directions for the study of the law, which you desire, it is a copious subject, and I remember that formerly I have wrote

⁴⁶ Chosky, 'Previously Undocumented Macroeconomics from the 1680s', p. 515; but note that Chosky, p. 516, declined to verify RN as author, since such verification 'may well go beyond the possibilities of the available evidence'.

⁴⁷ See *supra* Chapter 1 sect. 1.3.

⁴⁸ RN, 'Letters', pp. 273, 280–81.

somewhat about it, which if I can find it, shall be committed to you'. In the second, written in 1733 but misdated Rougham, 16 March 1733,⁴⁹ North answers his son's request for 'apt instructions' to serve a friend who wished to study the common law. But he points out,

...really as to any pen work I am in a disabled condition, and as to memory and judgment no better than effete. I had once made a short dissertation of that sort, but what and where it is I cannot tell. I am sure among my papers I can find no footsteps of it. The ordinary books recommended to beginners are, 1, Institutionary; and 2, Precedents or Reports of Cases. And first of the first, Littleton's *Tenures* is a prime book to be read alone, and not with Coke's *Comment*, which is a commonplace of difficult matters, that confound rather than explain the author, of which one excellency is, that it is as plain and will not be made plainer by any comment. Other books there are, as Perkins, the *Natural Review*, Crompton's *Jurisdiction of Courts*, to which may be joined the Lord Coke of the same subject, Stamford's *Pleas of the Crown*, and Coke of the same, and some others of like kind to be found in common catalogues, and (2) for reports, Plowden is usually recommended and probably enough. ... But more pleasant studies are to be joined, as history, records, or precedents, when to be had, and mornings are proper for law, afternoons for relaxation and discourse, the prattling of which is to be cultivated, for some have defined the laws *ars bablativa*. It is certain that putting cases is a most useful exercise, and some say there never was a good lawyer that was not a good put-case.

Although Augustus Jessopp, the editor of this letter, deleted portions of it, what he retained reveals that at the age of ninety North could recount the sum of what he had written previously in his 'short dissertation',⁵⁰ for he there states that he had been frequently solicited for 'some directions in a study so particular' and that he had as frequently afforded them 'in discourse, according to my capacity'.

⁴⁹ See RN, 'Letters', p. 280, which the editor gives '1733/4' instead of '1732/3' (RN died on 1 March 1734).

⁵⁰ For some preparatory essays, see *supra* Appendix A.

But although ‘such discourses make but indifferent impression, being of matters strange and new, and so are apt to sink, and fade to nothing’,

...yet being desirous to gratify friends, as well as in due time to put forward some [discourse] ... [in order] to preserve in my remembrance such notices, as at present seem material, and considerable, I have undertaken in an extempore way to set them down in writing, but cursorily, and in no better method than that way of proceeding will permit (p. 3).

The copy text for the edition of North’s essay was the ‘original MS.’, now located at (UK:Lbl) Hargrave 394. This manuscript was once owned by the legal antiquary Francis Hargrave, although how he acquired it has yet to be determined. Lois Schwoerer neither consulted the manuscript when considering North’s *Discourse* for an article published in 1959,⁵¹ nor took account of the remains of Francis North on the same subject.⁵² And there still has been no comparison between that manuscript and the printed version in order to detect whether or not the editor has been faithful to North’s text.

The editor is identified only as a ‘member’ of the Inner Temple, almost certainly Henry Roscoe, who was called to the bar at the Inner Temple in February 1826. From 1819, when he began studying for the bar, he supported himself by literary work, which included the so-called 1826 ‘new edition’ of North’s lives⁵³ and an edition of another work hinted at in *A Discourse*.⁵⁴ About his editorial principles in the latter, he merely remarked that

⁵¹ Schwoerer, ‘Roger North and His Notes on Legal Education’, which contains numerous inaccuracies of fact as well as interpretation.

⁵² See RN’s transcript of FN, ‘An essay, and some papers touching the study of the common law’ (UK:Lbl) Add MS 32519: ff. 102v–103 (early period?); see also RN, *Life/FN*, pp. 200–204, p. 200, who states that ‘the first touches of his [FN’s] pen are imperfect, and were not as I beleve ever lookt upon after’.

⁵³ See *supra* NORTH 1742 and 1744.

⁵⁴ I.e., a new edition of ‘Coke upon Littleton’ (i.e., the first part of Coke’s *Institutes*); see [Roscoe] in RN, *A Discourse on the Study of the Laws*, pp. 55–6, 63, 73–5, 81, 92. The edition was begun by Hargrave until mental illness forced

From the occasional carelessness and incorrectness of the style, it is evident that this little Treatise was never prepared by the author for the press; but in now presenting it to the public it has been thought proper, with one or two very trifling exceptions, to adhere faithfully to the original manuscript (p. xv).

The editor also included two additions—the ‘Biographical Notice’ at the beginning (pp. iii–xv) and the ‘Notes and Illustrations’ at the end (pp. 43–105)—in both of which he represented North as biased. For example, he wrote that like ‘the other works of the same author [i.e., the biographical writings], the *Examen* is valuable for the many original anecdotes it contains, and the view it presents of party politics, but as an impartial authority it cannot be in any manner relied upon’ (pp. xiii–xiv). Perhaps echoing the opinions of Hargrave,⁵⁵ he also claimed that certain of North’s character sketches exhibit ‘very strong and unjust prejudices’, particularly in ‘the account which he has given of Sir Matthew Hale, a name which stands above all common eulogy’ (p. x).

Nearly a hundred years later, W. S. Holdsworth undertook a critical appraisal of books on the study of law, including Hale’s ‘Preface’ to Rolle’s *Abridgment*.⁵⁶ But it was North’s that was ‘the best’ of such books, because it

...displays all the excellencies which made North so admirable a biographer. His eye for picturesque details, his enthusiasm for anything which had aroused his interest, his capacity for shrewd criticism, and his broad common sense, give the Discourse an interest which books on methods of study rarely possess. The telling illustrations with which he points his remarks and his counsels, give us glimpses of the state of professional feeling, and of the standards of professional conduct, not to be found elsewhere. It is a valuable historical document because the author thought it worth while to write

him to retire in 1785, when the Catholic lawyer Charles Butler took over the editorship.

⁵⁵ See *supra* Chapter 2 sect. 2.2.

⁵⁶ See *supra* Chapter 2 sect. 2.5.

down information which many lawyers of that day would have regarded as mere commonplaces.⁵⁷

It is a pity, then, that there has been no modern edition of North's *Discourse*.

NORTH 1846 [ed. by E. Rimbault]

Memoirs of Musick by the Hon. Roger North, Attorney-General to James II. Now first printed from the original MS and edited, with copious notes, by Edward F. Rimbault, LL.D. F.S.A. London: Printed by C. Whittingham, Chiswick, for George Bell, 186 Fleet Street, 1846.

The edition of Edward Francis Rimbault was published under the aegis of the Musical Antiquarian Society of which he was honorary secretary.⁵⁸ It includes a factually inaccurate, though not hostile 'Biographical Notice of the Hon. Roger North' (pp. ix–xvii), in which the editor (note to p. xvi) acknowledges his indebtedness to the 'Biographical Notice' included in Roscoe's 1824 edition of North's *A Discourse on the Study of the Laws*.

The copy text for Rimbault's edition is entitled 'Memoires of Musick being some historico-criticall collections of that subject 1728'. This text constitutes the second part of (UK:H) MS R I.I.xlii, the whole of which represents North's final 1728 version of 'The Musickall Grammarian'.⁵⁹ But Rimbault paid no heed to the interconnectedness of the two parts, which together form a coherent

⁵⁷ Holdsworth, *A History of English Law*, vol. 6, pp. 493–8, p. 494.

⁵⁸ Rimbault was trained as a musician but devoted much of his life to unearthing England's musical past. According to Scholes, *The Mirror of Music*, vol. 2, p. 771, the honorary Doctor of Laws (LL.D.) that Rimbault put after his name is spurious.

⁵⁹ See *supra* Chapter 3 sect. 3.5 and RN, *The Musickall Grammarian 1728*; see also NP 3 for a digest of this, as well as the related manuscripts that together form RN's penultimate and final elucidation of the philosophy, practice and history of music.

argument. As for his other editorial principles, he merely claimed to have adhered to North's manuscript 'faithfully' with one or two 'trifling' exceptions. But Mary Chan, who compared Rimbault's edition with the original manuscript, found that he not only silently altered North's spelling, capitalisation and punctuation, but also silently substituted words with a different meaning—for example, for North's 'temerated' Rimbault gave 'enumerated', for 'flatile' he gave 'flabile'.⁶⁰

Previous to Rimbault's 'edition', North's 'Memoires of Musick' had attracted the attention of Charles Burney, who, in a letter dated 1799, wrote that

North's MS. Memoirs of Music was lent me by the late Dr. [Montagu] North, Canon of Windsor, the son of the writer of those Memoirs, with whom, and his older brother, Roger North of Rougham in Norfolk, I long lived in friendship. The North family, ancestors of the [second] Earl of Guilford, were originally of Norfolk, and great lovers and patrons of music, from the time of the Lord Keeper [Francis] North, to the death of my friend Dr. North, who had a very curious collection of music, and was himself a good musician. I forget now to whom, at his decease, the books were bequeathed; but I have, *somewhere*, a transcript of the chief part of the Memoirs of Music, which, if I ever find, you shall see. So much in reply to your letter.⁶¹

Although the transcript does not appear in the sale catalogue of Burney's musical library,⁶² parts of it are represented in the extracts

⁶⁰ Mary Chan, 'On Editing Roger North's Writings', pp. 4–5.

⁶¹ Charles Burney to Joseph Cooper Walker, 30 June 1799 (US:NYp) MLT B965.W181(2).

⁶² The library was sold by White on 8 August 1814 and following days. For a reprint of the sale catalogue, see *Catalogue of the Music Library of Charles Burney...* with an introduction by A. Hyatt King (Amsterdam, 1973); for addenda to the catalogue, see Kerry Grant, *Notes* (1974), 31: 45–8.

from North's manuscript included in the third volume of Burney's own history of music.⁶³

According to Rimbault, when Burney published his extracts, the original manuscript was still in the possession of North's son Montagu. Then, at the death of that son in 1779,

...the MS. in question, together with several others, passed into the hands of Roger North [i.e., the Rev. Edward Roger North], the author's grandson, and from him to the Rev. Henry North of Ringstead in Norfolk [i.e., Edward's unmarried son]. At the sale of the latter gentleman's library, about four years since, the 'Memoires...' had a very narrow escape from destruction, being purchased, with a quantity of others, for a few shillings by one of those persons who attend country sales known by the designation of brokers. The MS. however, together with another by the same author, entitled 'A Discourse relative to the Bariscope,'⁶⁴ were fortunately seen and purchased by Mr. Robert Nelson of Lynn in Norfolk;⁶⁵ and it is to this gentleman, in conjunction with Mr. G. Townshend Smith,⁶⁶ Organist of Hereford Cathedral, to whom Mr. Nelson presented the MS. that we are mainly indebted for its appearance in the present form (pp. v–vi).

In 1919 Rimbault's mostly accurate account of the history of the manuscript was repeated along with some rather jejune criticisms of

⁶³ Burney, *A General History of Music*, vol. 3 (1779), pp. 334, 408, 438, 467, 470, 475, 513. It has been widely assumed that Jessopp wrote the first memoir of North; see Jessopp, 'Roger North'. However, in 1813 Burney produced a short memoir; see Burney, 'Roger North'.

⁶⁴ This title does not match the several essays on the barometer ('baroscope' 'air-gager') in the British Library, for which see *supra* Chapter 1 sect. 1.3.

⁶⁵ So far, few details concerning this person have come to light. His 1848 correspondence with James Crossley is still preserved in (UK:Lbl) 32502: f. 277. And from this correspondence, Millard, 'The Chronology of Roger North's Main Works', p. 286, discovered that Nelson had also purchased a manuscript on 'architecture', possibly RN, 'Architecture' (UK:Lbl) Add MS 32540: ff. 69–80v (early period).

⁶⁶ I.e., George Townshend Smith, who was appointed organist of Hereford Cathedral in 1843.

North's text.⁶⁷ Then, in 1959 the 'Memoires of Musick' was re-edited, along with extracts from some of North's other manuscripts on music.⁶⁸ Although the editorial principles applied to this new edition set a high standard, the editor himself followed Rimbault's practice of extracting 'selections' from their context. This practice, however, has serious consequences, because without access to a complete thought in a piece of writing, a reader cannot understand the way in which North constitutes knowledge about music or even begin to grasp his originality.⁶⁹

NORTH 1887 [ed. by A. Jessopp]

The Autobiography of the Hon. Roger North edited by Augustus Jessopp, D.D., Rector of Scarning, Author of *One Generation of a Norfolk House*, *The History of the Diocese of Norwich*, etc. London: David Nutt, 270, Strand. Norwich: A. H. Goose and Co., Rampant Horse Street. 1887.

Available in both large and small paper sizes, *The Autobiography* was published by subscription with a seven-page list of some 233 subscribers. Seven subscribers have the surname North, including Marianne North and her brother 'Charles North, Esq., Rougham, Norfolk'; and their half-sister, Catherine, subscribed under her married name.⁷⁰ Another subscriber, Mrs. Arthur Onslow [*née* Elizabeth Stone], Camden Park, Menangle, New South Wales, had previously been visited by Marianne North during one of her travels abroad. In addition, it is worth recording that a copy of one of the subscribers, Hamon Le Strange ('le Strange') of Hunstanton Hall,

⁶⁷ Venn, 'Roger North and the "Memoires of Musick"', pp. 687–8.

⁶⁸ Wilson, *Roger North on Music*, pp. 315–59.

⁶⁹ E.g., would extracts out of Beethoven's symphonies enable one to grasp the nature and originality of the composer's musical thought?

⁷⁰ Catherine, the wife of John Addington Symonds, subscribed as 'Mrs. Symonds, Am Hof, Davos Place, Switzerland'.

Norwich, is preserved with a letter from the editor tipped in, asking Le Strange for information concerning the composer John Jenkins (A:Vsl) P942.005.#58.

The copy text for Jessopp's edition was 'Notes of Me' (UK:Lbm) Add MS 32506: ff. 1–194, one of the manuscripts purchased from James Crossley by the British Library (then British Museum) on 20 June 1885. In the year following there was a public announcement of the purchase, along with the following notice:

It is proposed to issue the autobiography, a selection of the letters, and some few essays which have never yet seen the light, and to preface the whole by an introductory narrative. The work will be published by subscription in a quarto form. It will be illustrated throughout by Miss Marianne North, herself a lineal descendant of Roger North, and will be edited by Dr. Jessopp.⁷¹

With the exception of 'some few essays', the edition was published as announced with an 'Introduction' and a concluding section entitled 'Supplementary', both of which provided data about North, his family and some of his relations. The 'Supplementary' section also included two extracts, one from North's writings on architecture, the other from an unreliable memoir of Mrs. Boydell,⁷² along with a brief note about the manuscript of North's autobiography as follows:

The *Autobiography* was first heard of when Gutch published his *Collectanea Curiosa* in 1781,⁷³ and there printed some pages of it, which Thomas Baker, the Non-juring Fellow of St. John's College, Cambridge, had transcribed at Rougham, apparently in 1736....⁷⁴ From this time [i.e., 1781] till about forty years ago nothing was heard of it. Offers were made more than once by Mr. [James] Crossley of Manchester, the

⁷¹ *The Times* (5 February 1886) issue 31675, col. C, p. 6.

⁷² I.e., Jane North, wife of the painter and engraver Josiah Boydell, and sister of Fountain, Armine and Edward Roger North, the children of RN's eldest son Roger.

⁷³ I.e., John Gutch, antiquary and divine.

⁷⁴ Baker did his transcriptions at Cambridge University, not at Rougham; see *supra* Introduction.

then possessor of the MSS., to sell them to the late Frederick North, M.P. for Hastings [Marianne North's father];⁷⁵ but the price asked was so exorbitant that no negotiations were continued. In 1875 I made an offer for the *Autobiography* alone, but it was declined, and I was then told that the whole mass of documents had been purchased from the late Dawson Turner several years before. They certainly were so purchased, and not the least curious part of the business is, that so enthusiastic and tenacious a collector as Mr. Turner, after once having them in his possession, should ever have relinquished them. From whom Mr. Turner acquired them, I have never been able to learn ('Supplementary', pp. xlv–xlvi).

In 1890 *The Autobiography* was reprinted in smaller format and included in Jessopp's 'edition' of North's lives of his brothers.⁷⁶

Although some of the editor's inclusions are useful, if sometimes inaccurate, his mode of transmitting North's text 'leaves much to be desired', because, as Peter Millard discovered, there were inaccuracies, misreadings, substantive alterations and substantial omissions that revealed 'an editorial attitude that is cavalier even by the relaxed standards of the Victorian era'.⁷⁷ These editorial problems, however, did not concern the literary critics before 1900, as one may discover from notices of Jessopp's edition in a number of contemporary periodicals. Three may be regarded as more or less representative of the opinions expressed at the time, a time when critics failed to grasp North's irony or to recognise his sceptical stance. One anonymous critic wondered if the autobiography was sufficiently exalted or exciting enough, given the fact that the subject's recreations were 'the gentle pursuits of music and yachting'.⁷⁸ A second critic stated outright that the 'story' was 'far from exciting', although he allowed it might be 'interesting, particularly for lawyers',⁷⁹ whereas the third critic admitted to being

⁷⁵ I.e., RN's great-great-grandson.

⁷⁶ See *supra* NORTH 1742 and 1744.

⁷⁷ Millard in RN, *Notes of Me*, pp. 60–2.

⁷⁸ *Athenæum* (29 October 1887), 1: 563.

⁷⁹ Birrell, 'Roger North's Autobiography' [1893], vol. 2, p. 284.

puzzled by North's manner of expression', finding it 'difficult to say in what the peculiar charm consists'.⁸⁰

It would have been interesting to learn the opinion of Francis Galton, who was one of the subscribers to Jessopp's edition and, according to Marianne North, an old friend of the family.⁸¹ For nearly thirty years earlier, Galton had used North's lives of his brothers as data for a book on hereditary genius.⁸² In his comments relating to this data, he too often accepted uncritically the opinions of the nineteenth-century Whig critics.⁸³ Nevertheless, at the conclusion of his discussion of the 'natural histories' of the Norths, Galton recognised not only that Roger North was no ordinary writer but also that he 'seems to have been a most loving and loveable man'.⁸⁴

⁸⁰ Osmund Airy, *English Historical Review* (1889), 3: 174–8, p. 175.

⁸¹ North, *Recollections of a Happy Life*, vol. 1, pp. 32–3.

⁸² See Galton, *Hereditary Genius*, pp. 1–49, for his Darwinian hypothesis and method. Since he believed that 'natural intellectual gifts are the birthright of some families', he also included, pp. 72–9, some 'kinsmen' of the Norths—e.g., the Montagu and Hatton families.

⁸³ See, e.g., Galton, *Hereditary Genius*, pp. 72–5.

⁸⁴ Galton, *Hereditary Genius*, p. 79, who described RN's lives as 'full of touches of genius and shrewd perception of character'.



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REFERENCES

MANUSCRIPTS

The abbreviations, RN Books (1) and RN Books (2), refer to the following two manuscripts which contain information about books that North once owned:

(1) [Untitled] List of books, not in the hand of North (UK:Nro) DN/MS C 2/29 (dated 1714). This manuscript is a short-title catalogue of books that North transferred from his personal library to the parochial library in Rougham Church. The Parochial Libraries Act (7 Ann 1708 cap. 14) required that a catalogue be produced and deposited by 29 September 1709 in cases where parochial libraries were already in existence. There was no such library at Rougham, so about 1709 or a little later North commenced building a room adjacent to the north isle of Rougham church for the use of future incumbents, as well as for his own successors at Rougham Hall. The room was completed in 1712, which suggests that the catalogue was made after the books had been transferred.¹

(2) [Untitled] List of books, two fragments (UK:Iro) Cobbold MSS Box 17, HA 49/C2/10/1 (Ipswich Record Office dates 1719, but both fragments are undated). The first fragment, which is not in the hand of North, is a leaf from an account book; the second, which is in his hand, is a slip of paper

North's unpublished writings are cited in the footnotes. In the case of manuscripts that have a title, the style of citation, which does not follow North's capitalisation, is as follows: RN, 'Some essays, concerning the manner of our sence, or perception of things'. When a title is very long, it is shortened to the first several words, e.g.,

¹ For RN's notes on the library, see Korsten, *Roger North*, pp. 23, 267 n.231; for its eventual dispersal, see North, *Recollections of a Happy Life*, vol. 1, p. 2; and for additional sources regarding the dispersal, see Colvin and Newman in RN, *Of Building*, p. xv and n.12.

RN, ‘An essay of musical ayre....’. When a manuscript has no title, it is cited as RN, Untitled. The citation is then followed by the abbreviation used for the repository that holds the manuscript (see *supra* Abbreviations), the manuscript sigla, if there is one, the relevant foliation, and the date or approximate date. However, I have not indicated whether a manuscript is a fragment, draft or otherwise incomplete.

Since most of North’s manuscripts are undated, I have adopted the principles established in the series of *North Papers* (see *infra* Published Works) to arrive at approximate dates—early, middle and late. However, as a result of an ongoing study of North’s manuscripts, I have modified the dates suggested in that series as follows: early period = c.1690–c.1705, middle period = c.1706–c.1720, and late period = c.1721–c.1732. In arriving at these dates, consideration has been given to both physical features and internal evidence, including the relation of a manuscript to North’s other writings.

When North has added material at a later date, I have added the word ‘mostly’, e.g., ‘(mostly early period)’. In cases where evidence indicates an overlap of periods, I have added a question mark, e.g., (middle period?) When there is insufficient evidence for dating or when more information needs to be sought, I have used the phrase ‘(date uncertain)’. And in the few cases where there is no evidence at all that enables a period to be assigned, I have indicated this as ‘(undatable)’. Note also that in the case of manuscripts that are notebooks, the assignment of a period refers to the specific entry in question, not to the entire notebook, because entries in it may have been made over a period of time.

The dating of one manuscript requires particular comment. This is the short essay entitled ‘Reason’ (UK:Lbl) Add MS 32526: ff. 120–123v, which on f. 123v has the date 1732. Except for the running head and page numbers, the text is in the hand of North’s amanuensis Ambrose Pimlowe. On the basis of internal evidence, however, I have assumed that Pimlowe’s copy was made from a text written about the time that North wrote the final paragraphs in ‘Of Etimology’, section 8 ff. 50–67. For this reason I have assigned the *content* of the manuscript to North’s middle period, not to the period

when it was copied by Pimlowe. Note, however, that this instance is not unique, and it is one of the problems that requires attention in any systematic investigation of North's manuscripts.

Some manuscripts, or portions of manuscripts, cited in the footnotes have been transcribed by Francis Korsten (see *infra* Published Works); but he ignored the usual conventions for transcription and failed to alert readers to the physical features of a manuscript or to his own practices that included taking an essay out of its context and inserting a heading of his own invention. Unless otherwise indicated, therefore, I have used my own transcriptions, which are edited following the principles set out in the Editorial Guidelines (see *supra* Part II. Introduction to the Edition).

PUBLISHED WORKS

Aarsleff, Hans

'John Wilkins', *Dictionary of Scientific Biography* ed. by C. C. Gillispie (16 vols., New York, 1970-80), vol. 14, pp. 361-81

Aesop

The Complete Fables tr. by Olivia and Robert Temple (Harmondsworth, Middlesex, 1998)

Almack, Edward

'Roger North's Life of his Brother: and other Seventeenth-Century MSS', *Notes and Queries* (14 March 1908), 10 series ix, pp. 201-3.

[Anonymous]

Reports of Cases decreed in the High Court of Chancery, during the Time of Sir Heneage Finch.... (London, 1725)

Anderson, Warren D.

Ethos and Education in Greek Music: The Evidence of Poetry and Philosophy (Cambridge, Massachusetts, 1966)

Arnauld, Antoine

The Art of Thinking tr. [from the 6th and last edition, 1685] by James Dickoff and Patricia James and a Foreword by C. W. Hendel (Indianapolis, Indiana, 1964)

Ashbee, Andrew

The Harmonious Musick of John Jenkins.... (Surbiton, Surrey, 1992)

Ashcroft, Richard

‘Revolutionary Politics and Locke’s Two Treatises of Government: Radicalism and Lockean Political Theory’, *Political Theory* (1980), 8: 429–86

Bacon, Francis

The Elements of the Common Lawes of, England. Branched into a double Tract: [I] The one Contayning a Collection of some principall Rules and Maximes of the Common Law.... [II] The other The Vse of the Common Law.... (London, 1630, each part separately paginated)

The Essays [1625] (London, 1907)

Baines, Paul and Pat Rogers

Edmund Curll, Bookseller (Oxford, 2007)

Baker, J. H.

‘Francis Hargrave’, *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols., Oxford, 2004), vol. 25, pp. 270–71

An Introduction to English Legal History (4th edn., London, 2002)

[Baker, Thomas]

Reflections upon Learning, wherein is shewn the Insufficiency thereof, in its several Particulars: in order to evince the Usefulness and Necessity of Revelation [1699] (4th edn., London, 1708)

Barker, Ernest (tr.)

From Alexander to Constantine: Passages and Documents ... 336 B.C.–A.D. 337 tr. with Introduction, Notes, and Essays (London, 1956)

Beaurline, I. A.

‘Dudley North’s Criticism of Metaphysical Poetry’, *Huntington Library Quarterly* (1962), 25: 299–313

Beddard, R. A. P. J.

‘William Sancroft’, *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols., Oxford, 2004), vol. 48, pp. 837–45

Berman, H. J.

‘The Origins of Historical Jurisprudence: Coke, Selden, Hale’, *The Yale Law Journal* (1994), 103: 1651–1738

Bickley, Francis (ed.)

The Diaries of Sylvester Douglas (Lord Glenbervie) (2 vols., London, 1928)

Birrell, Augustine

‘Roger North’s Autobiography’ [1893], *Collected Essays* (2d edn., 2 vols., London, 1902), pp. 283–9

Birrell, T. A.

‘Roger North and Political Morality in the Later Stuart Period’, *Scrutiny: A Quarterly Review* (1950–51), 27: 282–98

Bowle, John

Hobbes and his Critics: A Study in Seventeenth Century Constitutionalism (London, 1951)

Brown, Joyce

‘Guild Organisation and the Instrument-Making Trade, 1550–1830: The Grocers’ and Clockmakers’ Companies’, *Annals of Science* (1979), 36: 1–34

Bryden, D. J.

‘Sir Samuel Morland’s Account of the Balance Barometer, 1678’, *Annals of Science* (1975), 32: 359–68

Burney, Charles

A General History of Music, from the earliest Ages to the present Period (4 vols., London, 1776–89)

‘The Hon. Roger North’, *Cyclopædia: or, Universal Dictionary of Arts and Sciences ...* [ed. by Abraham Rees] (44 vols., London, 1802–20), vol. 24 (1813), n.p.

Butler, Charles

The Principles of Musik, in Singing and Setting: with the two-fold Use therof, [ecclesiasticall and civil] (London, 1636)

Butler, Samuel

Hudibras; with variorum Notes, selected principally from Grey and Nash, ed. by H. G. Bohn (London, 1885)

Campbell, John

Lives of the Lord Chancellors and Keepers of the Great Seal of England, from the Earliest Times till the Reign of King George IV (4th edn., 10 vols., London, 1857)

Cassirer, Ernst

The Philosophy of the Enlightenment tr. by F. C. A. Koelln and J. P. Pettegrove (Boston, Massachusetts, 1965)

Chan, Mary

'From Essayist to Author: Roger North and Evolving Narrative Forms', *The Seventeenth Century* (2000), 15: 266–82

Life into Story: The Courtship of Elizabeth Wiseman (Aldershot, 1998)

'On Editing Roger North's Writings on Music', *Early Music New Zealand* (1986), 2: 3–9

'Roger North', *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols., Oxford, 2004), vol. 41, pp. 115–19

Charron, Pierre

Of Wisdom: Three Books ... Made English by George Stanhope, D.D. late Fellow of King's College in Cambridge, from the best Edition, corrected and enlarg'd by the Author a little before his Death (2 vols., London, 1697)

Choksy, George D.

'The Bifurcated Economics of Sir Dudley North and Roger North: One Holistic Analytical Engine', *History of Political Economy* (1995), 27: 477–92

'Previously Undocumented Macroeconomics from the 1680s: The Analytical Arguments and Policy Recommendations of Sir Dudley North and Roger North', *History of Political Economy* (1992), 24: 515–32

Christianson, Paul

Discourse on History, Law, and Governance in the Public Career of John Selden, 1610–1635 (Toronto, 1996)

'John Selden', *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols, Oxford, 2004), vol. 49, pp. 694–705

- Cicero,
On Duties ed. by M. T. Griffin and E. M. Atkins (Cambridge, 1991)
- Clifford, James L.
 'Roger North and the Art of Biography', *Restoration and Eighteenth-Century Literature*.... (Chicago, 1963), pp. 275–85
- Cohen, Murray
Sensible Words: Linguistic Practice in England 1640–1785 (Baltimore, Maryland, 1977)
- Coke, Edward
Selected Writings ed. by Steve Sheppard (3 vols., Indianapolis, Indiana, 2003)
- Colie, Rosalie
 'The Essayist in his *Essay*', *John Locke: Problems and Perspectives* ed. by J. W. Yolton (Cambridge, 1969), pp. 234–61
- Colles, Richard
Reports of Cases upon Appeals and Writs of Error, in the High Court of Parliament; from the Year 1697, to the Year 1713.... (Dublin, 1789)
- Colligan, J. Hay
The Arian Movement in England (Manchester, 1913)
- Corcoran, Thomas H.
 'Introduction', *Seneca in Ten Volumes* (Cambridge, Massachusetts, 1971), vol. 7, pp. vii–xxix
- Cornwall, R. D.
Visible and Apostolic: The Constitution of the Church in High Church Anglican and Non-Juror Thought (Newark, New Jersey, 1993)
- Cromartie, Alan
 'Sir Matthew Hale', *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols., Oxford, 2004), vol. 24, pp. 533–40
Sir Matthew Hale, 1609–1676: Law, Religion and Natural Philosophy (Cambridge, 1995)
- Croston, A. K. (ed.)
Two Seventeenth-Century Prefaces.... (London, 1949)

Curtis, Lewis Perry (ed.)

Letters of Laurence Sterne.... (Oxford, 1935)

D'Alton, J. F.

Roman Literary Theory and Criticism: A Study in Tendencies
(New York, 1962)

Davies, J. Conway (ed.)

'Records of the Inner Temple', *Catalogue of the Manuscripts in the Library of the Honourable Society of the Inner Temple* (3 vols., London, 1972)

Delany, Paul

British Autobiography in the Seventeenth Century (London, 1969)

Derrett, J. D. M.

Law and Morality (Yelvertoft Manor, Northamptonshire, 1998)

Dethloff, Diana

'The Executors' Account Book and the Dispersal of Sir Peter Lely's Collection', *Journal of the History of Collections* (1996), 8: 15–51

Dunn, John

Locke (New York, 1984)

Enriques, Federico

The Historic Development of Logic: The Principles and Structure of Science in the Conception of Mathematical Thinkers tr. by J. Rosenthal
(New York, 1929)

Ferguson, John

Utopias of the Classical World (London, 1975)

Ferreira, M. Jamie

Scepticism and Reasonable Doubt: The British Naturalist Tradition in Wilkins, Hume, Reid and Newman (Oxford, 1986)

Franklin, James

The Science of Conjecture: Evidence and Probability before Pascal
(Baltimore, Maryland, 2001)

Freeman, J. I.

The Postmaster of Ipswich: William Stevenson Fitch Antiquary and Thief (London, 1997)

Friedrich, C. J.

The Philosophy of Law in Historical Perspective (2d edn., revised, Chicago, 1963)

Galton, Francis

Hereditary Genius: An Inquiry into its Laws and Consequences (London, 1869)

Gascoigne, John

‘Samuel Clarke’, *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols., Oxford, 2004), vol. 11, pp. 912–17

Grant, Michael (tr.)

Cicero on the Good Life (Harmondsworth, Middlesex, 1971)

Grassby, Richard

The English Gentleman in Trade: The Life and Works of Sir Dudley North 1641–1691 (Oxford, 1994)

Hale, Matthew

A Discourse touching Provision for the Poor (London, 1683)

The History of the Common Law of England ed. [from the 3d edn. of 1739] and with an Introduction by C. M. Gray (Chicago, 1971)

‘The Publisher’s Preface Directed to the Young Students of the Common-Law’ [by M. Hale], Henry Rolle, *Un abridgment des plusieurs cases et resolutions del common ley* [ed. by M. Hale] (London, 1668)

Hall, G. D. G. (tr.)

The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill.... (Oxford, 2002)

Halliday, Paul D.

‘Francis North’, *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols., Oxford, 2004), vol. 41, pp. 85–8

‘George Jeffreys’, *Oxford Dictionary of National Biography* ed. by H. C. G. Matthew and Brian Harrison (54 vols., Oxford, 2004), vol. 29, pp. 882–92

Hamburger, Philip

‘The Development of the Law of Seditious Libel and the Control of the Press’, *Stanford Law Review* (1985), 37: 661–765

Hargrave, Francis

A Collection of Tracts relative to the Law of England, from Manuscripts now edited (London, 1787)

Harris, Richard L.

A Chorus of Grammars: The Correspondence of George Hickes and his Collaborators on the "Thesaurus linguarum septentrionalium" (Toronto, 1992)

'George Hickes, White Kennett and the Inception of the *Thesaurus Linguarum Septentrionalium*', *Bodleian Library Record* (1983), 2: 169–86

Havighurst, A. F.

'The Judiciary and Politics in the Reign of Charles II', *The Law Quarterly Review* (1950), 66: 62–87, 229–52

Hawkins, John (ed.)

The Complete Angler: Or, Contemplative Man's Recreation [1760] (2d edn., London, 1761)

Heward, Edmund

Matthew Hale (London, 1972)

Heywood, John

The Proverbs and Epigrams [1562] (New York, 1967)

Hobbes, Thomas

Behemoth or The Long Parliament [1679] ed. by Ferdinand Tönnies [from the original manuscript].... (Chicago, 1990)

A Dialogue between a Philosopher and a Student of the Common Laws of England [1681] ed. with an Introduction by Joseph Cropsey (Chicago, 1997)

The Elements of Law natural and politic [1650] ed. with an Introduction by J. C. A. Gaskin (Oxford 1994)

Leviathan [1651] ed. with an Introduction by C. B. Macpherson (Harmondsworth, Middlesex, 1986)

Hodgen, Margaret T.

Early Anthropology in the Sixteenth and Seventeenth Centuries (Philadelphia, Pennsylvania, 1971)

Holdsworth, William S.

A History of English Law (vols. 1–13, London, 1903–38; vols. 14–17, London, 1964–72)

Hood, F. C.

‘The Change in Hobbes’s Definition of Liberty’, *The Philosophical Quarterly* (1967), 17: 150–63

Hooke, Robert

Micrographia or Some Physiological Descriptions of Minute Bodies made by Magnifying Glasses with Observations and Inquiries thereupon [1665] (New York, 1961)

Horace

‘On the Art of Poetry’, *Classical Literary Criticism* tr. by T. S. Dorsch (Harmondsworth, Middlesex, 1965), pp. 79–95

Hughes, S. F. D.

‘Mrs. Elstob’s Defense of Antiquarian Learning in her *Rudiments of Grammar for the English-Saxon Tongue* (1715)’, *Harvard Library Bulletin* (1979), 27: 172–91

Hunter, Michael

John Aubrey and the Realm of Learning (London, 1975)

Hyde, Henry (2d earl of Clarendon)

The State Letters ... and His Lordship’s Diary for the Years 1687, 1688, 1689 and 1690.... (2 vols., Oxford, 1768)

Jessopp, Augustus

‘Roger North’, *Dictionary of National Biography* ed. L. Stephen and S. Lee (66 vols., London, 1885–1901), vol. 61, pp. 621–24

Jones, Howard

The Epicurean Tradition (London, 1992)

Jones, William

The Scholar Armed against the Errors of the Time. Or, a Collection of Tracts on the Principles and Evidences of Christianity, the Constitution of the Church, and the Authority of Civil Government [1780] (2 vols., London, 1795)

Kassler, Jamie C.

The Beginnings of the Modern Philosophy of Music.... (Aldershot, 2004)

Inner Music: Hobbes, Hooke and North on Internal Character (London, 1995)

Music, Science, Philosophy: Models in the Universe of Thought (Aldershot, 2001)

'Roger North', *New Grove Dictionary of Music and Musicians* ed. by S. Sadie and J. Tyrrell (2d edn., 29 vols., London, 2000), vol. 18, pp. 53–6

The Science of Music in Britain, 1714–1830: A Catalogue of Writings, Inventions and Lectures (2 vols., New York, 1979)

Keeton, G. W.

Lord Chancellor Jeffreys and the Stuart Cause (London, 1965)

Kelley, Donald R.

'Civil Science in the Renaissance', *The Writing of History and the Study of Law* (Aldershot, 1997), pp. 57–78

The Human Measure: Social Thought in the Western Legal Tradition (Cambridge, Massachusetts, 1990)

Knox, Norman

The Word Irony and its Context, 1500–1755 (Durham, North Carolina, 1961)

Korsten, F. J. M.

Roger North (1651–1734): Virtuoso and Essayist: A Study of his Life and Ideas.... (Amsterdam, 1981)

'Roger North (1651–1734) and his Writings on Science', *LIAS* (1981), 8: 203–24

Kristeller, Paul Oskar

Renaissance Thought II: Papers on Humanism and the Arts (New York, 1965)

Lanham, Richard A.

A Handlist of Rhetorical Terms: A Guide for Students of English Literature (Berkeley, California, 1969)

Letwin, William

'The Authorship of Sir Dudley North's *Discourses on Trade*', *Economica* (1951), n.s. 18: 35–56

The Origins of Scientific Economics: English Economic Thought 1660–1776 (London, 1963)

Lewis, J. U.

‘Sir Edward Coke (1552–1633): His Theory of “Artificial Reason” as a Context for Modern Basic Legal Theory’, *The Law Quarterly Review* (1968), 84: 330–42

Leyden, W. von

Seventeenth-Century Metaphysics: An Examination of Some Main Concepts and Theories (New York, 1968)

Locke, John

An Essay concerning Human Understanding ed. with an Introduction by P. H. Nidditch (Oxford, 1979)

Some Thoughts concerning Education ed. with an Introduction, Notes and Critical Apparatus by John W. and Jean S. Yolton (Oxford, 2000)

Two Treatises of Government: In the Former, The False Principles and Foundation of Sir Robert Filmer, and His Followers, are Detected and Overthrown. The Latter is an Essay concerning The True Original, Extent, and End of Civil-Government (London, 1698)

Lowe, E. J.

Locke (London, 2005)

McAdoo, H. R.

The Spirit of Anglicanism: A Survey of Anglican Theological Method in the Seventeenth Century (New York, 1965)

Macaulay, Thomas B.

The History of England to the Accession of James the Second (8 vols., London, 1958–62)

Macdonald, Hugh

John Dryden: A Bibliography of Early Editions and Drydeniana (Oxford, 1939)

‘The Law and Defamatory Biographies in the Seventeenth Century’, *Review of English Studies* (1944), 20: 177–98

Macdonald, Hugh and Mary Hargreaves

Thomas Hobbes: A Bibliography (London, 1952)

Macdonald, Michael and Terence R. Murphy

Sleepless Souls: Suicide in Early Modern England (Oxford, 1990)

Macnair, Mike

‘A Fragment on Proof by Francis North, Lord Guilford’, *The Seventeenth Century* (1993), 8: 143–8

Mandeville, Bernard

The Fable of the Bees or Private Vices, Publick Benefits with a Commentary Critical, Historical, and Explanatory by F. B. Kaye (2 vols., Indianapolis, Indiana, 1988)

Martin, Charles Trice (tr.)

Middle Temple Records: Minutes of Parliament, 1501–1703 (4 vols., London, 1904–05)

Mason, R. H.

The History of Norfolk from original Records and other Authorities preserved in public and private Collections (2 vols., London 1885)

Michael, Ian

English Grammatical Categories and the Tradition to 1800 (Cambridge, 1970)

The Teaching of English from the Sixteenth Century to 1870 (Cambridge, 1987)

Middleton, W. E. Knowles

The History of the Barometer (Baltimore, Maryland, 1964)

Millard, Peter

‘The Chronology of Roger North’s Main Works’, *Review of English Studies* (1973), n. s. 24: 283–94

Miller, John

The Restoration and the England of Charles II (2d edn., London, 1997)

James II (New Haven, Connecticut, 2000)

Miller, Oliver

Sir Peter Lely 1618–80: Exhibition at 15 Carlton House Terrace.... (London, 1978)

Moss, Ann

Printed Commonplace-Books and the Structuring of Renaissance Thought (Oxford, 1996)

- Munby, A. N. L.
Phillipps Studies I–V (2 vols., London, 1971)
- Nadler, Steven M.
Arnauld and the Cartesian Philosophy of Ideas (Princeton, New Jersey, 1989)
- North, Dudley (3d baron North)
A Forest promiscuous of Several Seasons Productions [in 4 parts]....
 ([2d enlarged edn.] London, 1659)
- North, Dudley (4th baron North)
Light in the Way to Paradise: With Other Occasionals (London, 1682)
- North, Marianne
Recollections of a Happy Life being the Autobiography of Marianne North ed. by her sister Mrs. John Addington Symonds (2 vols., London, 1892)
- North, Roger
Cursory Notes of Musicke (c.1698–c.1703) ... ed. by M. Chan and J. C. Kassler (Kensington, NSW, 1986)
- A Discourse of Fish and Fish-ponds* [see *supra* Appendix B]
- A Discourse of the Poor* [see *supra* Appendix C]
- A Discourse on the Study of the Laws* [see *supra* Appendix C]
- Examen* [see *supra* Appendix C]
- General Preface* [see below *Life/JN*]
- The Gentleman Accomptant* [see *supra* Appendix B]
- ‘Letters of the Hon[ourable] Roger North’, *The Autobiography* ... ed. by A. Jessopp (London, 1887), pp. 221–81
- Life/FN = The Life of the Lord Keeper North* ed. by M. Chan (Lewiston, Wales, 1995)
- Life/JN = General Preface & Life of Dr John North* ed. by P. Millard (Toronto, 1984)
- The Muscicall Grammarian 1728* ed. by M. Chan and J. C. Kassler (Cambridge, 1990)

Notes of Me: The Autobiography of Roger North [mostly early period]
ed. by P. Millard (Toronto, 2000)

Of Building: Roger North's Writings on Architecture [all early period]
ed. by H. Colvin and J. Newman (Oxford, 1981)

'Of Etimology' [see *supra* Part II]

'Some Notes upon An Essay of Musick, printed, 1677, by way of
Comment, and Amendment' (c.1693–98) ed. in J. C. Kassler, *The
Beginnings of the Modern Philosophy of Music....* (Aldershot, 2004),
pp. 179–200

North, Thomas (tr.)

*The Lives of the noble Grecians and Romans compared together by
Plutarke, done into English* [from the French of Jacques Amyot]
(London, 1579)

North Papers

*NP 2 = Roger North's Writings on Music to c.1703: A Set of Analytical
Indexes* prepared by J. D. Hine with *Digests of the Manuscripts*
by M. Chan and J. C. Kassler (Kensington, NSW, 1986)

*NP 3 = Roger North's The Muscicall Grammarian and Theory of
Sounds: Digests of the Manuscripts* by M. Chan and J. C. Kassler
with an *Analytical Index of 1726 and 1728 Theory of Sounds*
by J. D. Hine (Kensington, NSW, 1988)

NP 4 = Roger North: Materials for a Chronology of his Writings
[Checklist No. 1] by M. Chan and J. C. Kassler (Kensington, NSW,
1989)

*NP 5 = Roger North's Writings on Music c.1704–c.1709: Digests of the
Manuscripts* by M. Chan and J. C. Kassler with *Analytical Indexes*
by J. D. Hine (Kensington, NSW, 1999)

*NP 6 = Roger North's 'Of Sounds' and Prendcourt Tracts
c.1710–c.1716: Digests and Editions* by M. Chan and J. C. Kassler
with an *Analytical Index* by J. D. Hine (Kensington, NSW, 2000)

O'Sullivan, Richard

The Spirit of the Common Law: A Representative Collection of Papers
selected and ed. by B. A. Wortley (Tenbury Wells, Worcestershire,
1965)

Parker, R. H.

‘Roger North: Gentleman, Accountant and Lexicographer’, *Accounting History* (1997), 2: 31–51

Parsons, Daniel (ed.)

The Diary of Sir Henry Slingsby, of Scriven, Bart.... (London, 1836)

Pascal, Blaise

Pensées tr. with an Introduction by A. J. Krailsheimer (Harmondsworth, Middlesex, 1966)

Pembroke, S. G.

‘Oikeiōsis’, *Problems in Stoicism* ed. by A. A. Long (London, 1971), pp. 114–49

Pepys, Samuel

The Diary ... ed. by R. Latham and W. Matthews (11 vols., Berkeley, California, 1970)

Pitcher, John

Samuel Daniel: The Brotherton Manuscript.... (Leeds, 1981)

Pollock, Frederick and W. S. Holdsworth

‘Sir Matthew Hale on Hobbes: An Unpublished MS.’, *The Law Quarterly Review* (1921), 37: 274–303

Popkin, Richard

The History of Scepticism from Savonarola to Bayle (rev. edn., Oxford, 2003)

Prest, Wilfrid

‘The English Bar, 1550–1700’, *Lawyers in Early Modern Europe and America* ed. by W. Prest (London, 1981), pp. 65–85

Pufendorf, Samuel

De officio hominis et civis juxta legem naturalem libri duo tr. by F. G. Moore (New York, 1927)

Putnam, Samuel (tr.)

The Portable Cervantes ... with an Introduction and Notes (Harmondsworth, Middlesex, 1956)

Randall, D. B. J.

‘Country Delights for the Gentry: A View from 1669’, *South Atlantic Quarterly* (1981), 80: 222–32

Gentle Flame: The Life and Verse of Dudley, Fourth Lord North (1602–1677) (Durham, North Carolina, 1983)

‘Mode and Voice in Seventeenth-Century Meditative Verse: A Discussion of Five Newly Discovered Poems by Dudley North’, *Medieval and Renaissance Studies* ... ed. by Frank Tirro (Durham, North Carolina, 1982), pp. 55–86

Raven, C. E.

John Ray, Naturalist: His Life and Works (2d edn., Cambridge, 1950)

Ricci, Seymour de

English Collectors of Books and Manuscripts (1530–1930) and their Marks of Ownership (Bloomington, Indiana, 1960)

Roberts, Clayton

The Growth of Responsible Government in Stuart England (Cambridge, 1966)

Rogers, Pat

‘One of the Remarkables’, *Times Literary Supplement*, 19 October 1984, p. 1196

Ruhe, E. L.

‘Edmund Curll and His Early Associates’, *English Writers of the Eighteenth Century* ed. by J. H. Middendorf (New York, 1971), pp. 69–89

Salmon, Vivian

‘John Wilkins’ *Essay* (1668): Critics and Continuers’, *The Study of Language in Seventeenth-Century England* (Amsterdam, 1979), pp. 191–206

Sancroft, William

Familiar Letters of ... [the] late lord archbishop of Canterbury to Mr. North, afterwards Sir Henry North of Mildenhall, Bart. both before, but principally after, his Deprivation for refusing to take the oaths to King William III. and his Retirement to the Place of his Nativity in Suffolk.... (London, 1757)

Schmidt, Roger

‘Roger North’s Examen: A Crisis in Historiography’, *Eighteenth-Century Studies* (1992), 26: 57–75

Schneewind, J. B.

The Invention of Autonomy: A History of Modern Moral Philosophy (Cambridge, 1998)

Scholes, Percy A.

The Mirror of Music 1844–1944: A Century of Musical Life in Britain as reflected in the Pages of the Musical Times (2 vols., London, 1947)

The Puritans and Music in England and New England (Oxford, 1969)

Schwoerer, Lois

‘Roger North and his Notes on Legal Education’, *Huntington Library Quarterly* (1959), 22: 323–43

Selden, John

‘Notes upon Sir John Fortescue Knight, Lord Chief Justice of England [1616]’, J. Fortescue, *De Laudibus Legum Angliæ* [1537].... (London, 1672), pp. 1–51

Table Talk [1689].... (reprinted with corrections, London, n.d.)

Shapiro, Barbara

A Culture of Fact: England, 1550–1720 (Ithaca, New York, 2000)

Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature (Princeton, New Jersey, 1983)

Shipp, G. P.

NOMOS ‘Law’ (Sydney, 1978)

Slaughter, M. M.

Universal Languages and Scientific Taxonomy in the Seventeenth Century (Cambridge, 1982)

Smeed, J. W.

The Theophrastian ‘Character’: The History of a Literary Genre (Oxford, 1985)

Spratt, Thomas

The History of the Royal Society ed. with critical Apparatus by J. I. Cope and H. W. Jones (St. Louis, Missouri, 1959)

Sprott, S. E.

The English Debate on Suicide from Donne to Hume (La Salle, Illinois, 1961)

Starr, G. A.

‘Roger North and the Arguments and Materials for a Register of Estates’, *The British Museum Quarterly* (1966), 31: 17–19

Stewart, Larry

‘Samuel Clarke, Newtonianism, and the Factions of Post-Revolutionary England’, *Journal of the History of Ideas* (1980), 42: 53–72

Straus, R.

The Unspeakable Curll. Being some Account of Edmund Curll, Bookseller; To which is added A full List of his Books (London, 1970)

Tacitus

On Britain and Germany tr. by H. Mattingly (West Drayton, Middlesex, 1948)

Thompson, E. M. (ed.)

Correspondence of the Family of Hatton being chiefly Letters addressed to Christopher first viscount Hatton A.D. 1601–1704 (2 vols., London, 1878)

Tiles, Mary and Jim Tiles

An Introduction to Historical Epistemology: The Authority of Knowledge (Oxford, 1993)

Timbs, John

Clubs and Club Life in London. With Anecdotes of its famous Coffee Houses, Hostelries and Taverns, from the Seventeenth Century to the Present Time (London, c.1872)

Venn, Lyn

‘Roger North and the “Memoires of Musick”’, *Musical Opinion* (August, 1919), pp. 687–8.

Vertue, George

Note Books (6 vols., Oxford, 1930–55)

Wainwright, Jonathan P.

Musical Patronage in Seventeenth-Century England: Christopher, First Baron Hatton (1605–1670) (Aldershot, 1997)

Whittemore, Reed

Pure Lives: The Early Biographers (Baltimore, Maryland, 1988)

Wierzbicka, Anna

English: Meaning and Culture (Oxford, 2006)

Wilde, C. B.

‘Whig History’, *Dictionary of the History of Science* ed. by W. F. Bynum et al. (London, 1981), p. 445

Wilkins, John

An Essay towards a Real Character, and a Philosophical Language (London, 1668)

Mathematical Magic: Or, the Wonders that may be Performed by Mechanical Geometry. In Two Books....[1648] (4th edn., London, 1661)

Williamson, Tom

‘Roger North at Rougham: A Lost House and its Landscape’, *Counties and Communities: Essays in East Anglian History* ed. by C. Rawcliffe, R. Virgo and R. Wilson (Norwich, 1966), pp. 275–90

Wilson, Charles

England’s Apprenticeship 1603–1763 (London, 1965)

Wilson, John

Roger North on Music: Being a Selection from his Essays Written during the Years c.1695–1728 (London, 1959).

Yale, D. E. C.

‘Hobbes and Hale on Law, Legislation and the Sovereign’, *Cambridge Law Journal* (1972), 31: 121–56



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INDEX OF PERSONS

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